



Parliament of New South Wales

Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020

1/57 – March 2021

Inquiry into the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020



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Membership

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Chair's foreword

The Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 (the Bill) is a private member's bill that was referred to the Joint Select Committee by the NSW Parliament. The terms of reference required the Committee to inquire into and report on the Bill, including whether its objectives are valid and, if so, whether its terms are appropriate for securing its objectives.

The inquiry raised important and complex issues. Religious beliefs and activities go to the core of who we are and what we do as people and can provide a whole-of-life moral code. Religious organisations have provided longstanding and invaluable education, healthcare and welfare services across the State. Despite the significance of religious beliefs and activities in our community, the Anti-Discrimination Act 1977 (NSW) (the Act) does not currently protect against religious discrimination, as it does against discrimination on the basis of age, race and sex.

The Bill proposes to amend the Act to make discrimination on the grounds of a person's religious beliefs or activities unlawful. It does this by inserting a number of provisions relating to areas of public life, such as work, education, the provisions of goods and services, accommodation, registered clubs and state laws and programs.

The inquiry sparked broad public debate and received 192 submissions, 19,502 responses to the online questionnaire and evidence from 57 witnesses across 47 organisations at the public hearings. There was robust debate within the Committee membership which represented a broad cross section of views.

In its deliberations the Committee noted the relevance of other consultations and legislative proposals including the recommendations of the 2018 Expert Panel Report: Religious Freedom Review and the draft Commonwealth Bills regarding religious discrimination and religious freedom. We were mindful of the substantial delays in the introduction of these protections at the Commonwealth level and the Expert Panel Report's recommendations for NSW to implement the necessary change itself.

After considering the evidence, the Committee formed the view that there was a strong need to protect people from discrimination on the grounds of religious beliefs and activities.

A majority of the Committee found that there was also a need to protect not-for-profit religious organisations from discrimination on the grounds of religious beliefs or activities when they engage in certain conduct because of their religious doctrines, tenets, beliefs or teachings.

A majority of the Committee recommended that the NSW Government introduce its own bill providing such protections by the end of 2021.

During the inquiry, evidence was presented that some of the terms of the Bill were not appropriate to securing its objectives, that it was not compatible with the Act's framework and that it preferred religious beliefs and activities. An example is the proposal to embed international conventions and declarations and the Siracusa Principles across the Act and require decision makers to have fundamental regard to them. Another example is the Bill's

proposal to prevent the President of the Anti-Discrimination Board from granting exemptions on the grounds of religious beliefs or activities, a power which is available to the President under the other heads of discrimination in the Act.

Some community members also wanted to ensure that the Government Bill does not have the unintended consequence of creating discrimination on the basis of other protected attributes in the Act.

I urge the Government to take this extensive stakeholder commentary and any proposed amendments to the Bill into account when drafting its Bill.

The implementation of these recommendations may have an impact on the functions of Anti-Discrimination NSW (ADNSW). In my view, it is not the Committee's place to prescribe how ADNSW does its work but only to recommend that it is well resourced to discharge its responsibilities. Similarly, I consider that the report commentary about the ADNSW's activism and complaints-handling was unwarranted and not supported by the inquiry evidence.

Stakeholders also raised issues that were not within the terms of the Bill for further consideration. Firstly, a number of stakeholders raised the need to include protection from vilification on the grounds of religious beliefs and activities.

Secondly, stakeholders suggested a review of the Act to examine any inconsistencies that had arisen through previous amendments and potential changes that may be required if there is Commonwealth legislative reform. In response to these concerns, the Committee recommended that there should be a broad-based review of the Act, but that this should not delay the introduction of the Government Bill.

Through the findings and recommendations of this report it is my strong expectation that the important issue of protection from religious discrimination can finally be addressed through a Government Bill, thereby improving the lives of people in NSW.

On behalf of the Committee, I extend our gratitude to the individuals and organisations that contributed to the inquiry. Their contributions were extremely valuable in furthering the Committee's understanding of the issues and preparing this report.

I want to thank my colleagues Deputy Chair Mr Paul Lynch MP, the Hon. Catherine Cusack MLC, Mr Jihad Dib MP, the Hon. Greg Donnelly MLC, the Hon. Scott Farlow MLC, the Hon. Sam Farraway MLC, Mr Alex Greenwich MP, the Hon. Mark Latham MLC, Ms Jenny Leong MP, Dr Joe McGirr MP, Ms Tania Milhailuk MP, Ms Robyn Preston MP and Mr Gurmesh Singh MP for their collaborative approach throughout this inquiry.

I also want to thank the Clerks and Secretariat for their generous assistance and in relation to the inquiry and the preparation of the report.

I commend the report to the House.

The Hon. Gabrielle Upton MP

Chair

Findings and recommendations

Finding 1 _____ 2

The Committee finds that there is a need to protect individuals from discrimination on the grounds of religious beliefs or activities as those terms are defined in the Bill and where those activities are lawful.

Finding 2 _____ 2

The Committee finds that there is a need to protect not-for-profit religious organisations from discrimination on the grounds of religious beliefs or activities by engaging in certain conduct because of their religious doctrines, tenets, beliefs or teachings.

Finding 3 _____ 2

There was strong public support for the Bill. Of the 19,403 responses to the Committee’s online survey in July-August 2020, 68.1% supported the Bill, 5.8% supported it with amendments, 0.7% were neutral, while 25.4% opposed the Bill. The Bill also attracted support from the peak Christian, Islamic and Jewish bodies in NSW.

Finding 4 _____ 2

The Committee found that the terms of the Bill were valid and succeeded in protecting people of religious faith and no faith from discrimination. From extensive public hearings, however, the Committee found several amendments to be necessary to improve the Bill. We regard the Bill as a useful template for this kind of legislation, but it has a number of shortcomings that need to be corrected.

Finding 5 _____ 3

The Committee found the Bill to be consistent with the structure and purpose of the NSW Anti-Discrimination Act. It provides new protections against discrimination; it does not take any away. As Anglican Bishop Michael Stead said in evidence, “This is not a Bill that protects people of religion if they discriminate and attack others. It’s a Bill that protects them against discrimination.”

Finding 6 _____ 3

The Committee found the Bill does not privilege religion over other protected attributes. It does not create a hierarchy of protections. Indeed, it can be argued that other attributes covered in the Anti-Discrimination Act currently enjoy special treatment because they are protected from speech vilification. This is true of Race (Part 2, Division 3A), Transgender (Part 3A, Division 5), Homosexuality (Part 4C, Division 4) and HIV/AIDS (Section 492XB). The Bill before the Committee has no such protections.

Finding 7 _____ 3

The Committee found that the Bill’s determination of the concept of ‘religious belief’ (genuinely and sincerely held) is consistent with the High Court’s ruling in *Church of the New Faith v Commissioner of Payroll Tax (Vic)* in 1983, and should be adopted in NSW law.

Finding 8 _____ 3

The Committee believes there is utility in applying the Siracusa Principles to each of the attributes covered in the Anti-Discrimination Act, not just for cases involving religious rights. A new clause in 'Principles of Act' is needed to ensure equal treatment of all attributes, with the effect that the Siracusa Principles' conflict-resolution mechanisms are to be applied whenever any right covered by those Principles is concerned.

Finding 9 _____ 3

The Committee was concerned to hear evidence that the complaints-handling functions of Anti-Discrimination NSW are run by clerical staff (not trained lawyers), and that the organisation has been struggling to create proper computerised records. The acceptance of discrimination complaints can be very distressing and expensive for respondents. It should be handled by professional legal expertise. The Committee regards this as a basic competency standard for the NSW legal system.

Recommendation 1 _____ 3

The Committee recommends that the NSW Government introduce a Government Bill inserting discrimination on the grounds of religious belief or activity, where that activity is lawful, as a protected attribute in the *Anti-Discrimination Act 1977 (NSW)* by the end of 2021, and the Committee recommends using this Bill's definitions of 'religious beliefs' and 'religious activities', the associated definition of 'genuinely believes' in section 22K and the associated interpretive provisions in section 22KA and section 22KB.

Recommendation 2 _____ 4

The Committee recommends that the Government Bill should include the following:

- (a) principles that give equal weight to all protected attributes under the *Anti-Discrimination Act 1977 (NSW)* (the Act) while recognising the special characteristics and protection requirements of religion
- (b) reference to relevant international instruments (to the extent ratified) that protect the rights and interests of individuals and protected attributes under the Act
- (c) consideration of relevant recommendations of the Ruddock Review, including having regard to the *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights* to guide the operation of competing rights when limitations are imposed on them
- (d) defined terms for religious beliefs, religious activities and religious organisations
- (e) recognition that religion is an attribute that involves the expression of religious beliefs and lawful actions motivated by religious beliefs and the association of individuals and organisations in accordance with their religious doctrines, tenets, beliefs or teachings
- (f) protection for not-for-profit religious organisations from discrimination on the grounds of religious beliefs or activities by engaging in certain lawful conduct because of their religious doctrines, tenets, beliefs or teachings
- (g) provisions that balance the participation of religious organisations in State functions or programs and universal access to publicly funded goods and services

Recommendation 3 _____ 4

The Committee recommends that the NSW Anti-Discrimination Board be sufficiently resourced to ensure that it can discharge the functions flowing from the recommendations in this report and the Board employs qualified lawyers (not clerical staff) to discharge its complaints handling responsibilities.

Recommendation 4 _____ 5

The Committee recommends that there be a broad-based review to update the *Anti-Discrimination Act 1977 (NSW)* but that this should not delay the NSW Government seeking passage of their Bill through the NSW Parliament. The review should assess the effectiveness of the religious vilification provisions in the NSW *Crimes Act 1900* and whether religious vilification protections are required in the Act.

Chapter One – Overview

Summary

- 1.1 This chapter provides a brief overview of the current legislative framework for anti-discrimination law in New South Wales and the Commonwealth. In particular, the chapter identifies that there are narrow protections for religious discrimination in NSW, largely limited to protection from discrimination and vilification on the grounds of 'ethno-religious' origin. At the Commonwealth level, several draft Bills regarding religious discrimination were released for consultation in 2019 following the recommendations of the Religious Freedoms Review Report of the Expert Panel (the Ruddock Review).¹ These Bills had not progressed at the time of writing.
- 1.2 This chapter also examines the objects of the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020. There was overarching stakeholder support to create protection from religious discrimination. Different views were expressed as to whether the protection was best achieved through the Bill, amending the Bill, or other means.
- 1.3 This chapter lists all the findings and recommendations of the Joint Select Committee. The evidence which supports these findings and recommendations is contained in subsequent chapters.

Committee comment

- 1.4 The Committee acknowledges that the issues raised by the Bill are wide ranging, important and sensitive to stakeholders. Religion is substantially different to the other protected attributes in the *Anti-Discrimination Act 1977* (NSW) (the Act). For many people, religion provides a whole-of-life moral code and religious organisations in NSW have a long and meritorious commitment to providing education, health, welfare, charitable and other community services across the State.
- 1.5 Stakeholder views on the Bill's specific provisions are discussed in more detail in Chapter 2. The Committee notes that there was an overall consensus among those stakeholders who supported the Bill on their reasons for doing so. This was largely due to similar concerns of religious communities to have protection from discrimination on the basis of their religious views and activities in the workplace and other areas of public life.
- 1.6 The Committee also acknowledges that there were diverse reasons for stakeholders opposing certain aspects of the Bill, ranging from legal and medical issues to concerns about inclusiveness and equality. The Committee has endeavoured to provide a balanced overview of the views expressed in this report.
- 1.7 Despite different stakeholder views on the detail of the Bill, the Committee noted there was a widespread view that there is a gap in anti-discrimination protection

¹ The Hon. Philip Ruddock, *Expert Panel, Report on religious freedoms in Australia*, [Report of the Expert Panel](#), 2018 viewed March 2021

for religion. Stakeholders therefore supported amendments to the Act to include the protection from discrimination on the ground of religion. It was also highlighted that the Ruddock Review recommended that NSW amend its anti-discrimination laws to make it unlawful to discriminate on the basis of religious beliefs and activities.

- 1.8 The Committee heard evidence on the substantial delays in the passage of Commonwealth legislation in this area of anti-discrimination law. The Committee was mindful that the Ruddock Review recommended that NSW should adopt a religious discrimination protection, regardless of what the Commonwealth determined to do.

Finding 1

The Committee finds that there is a need to protect individuals from discrimination on the grounds of religious beliefs or activities as those terms are defined in the Bill and where those activities are lawful.

Finding 2

The Committee finds that there is a need to protect not-for-profit religious organisations from discrimination on the grounds of religious beliefs or activities by engaging in certain conduct because of their religious doctrines, tenets, beliefs or teachings.

- 1.9 The Committee heard evidence from stakeholders about the objects of the Bill. While there was a consensus on the need for protection from discrimination on the ground of religious beliefs and activities, there were different views on whether the Bill was the best way to achieve this outcome. The Committee found that some stakeholders had concerns about the Bill's terms, including that some of its provisions may not be compatible with the existing anti-discrimination law framework or other laws.

Finding 3

There was strong public support for the Bill. Of the 19,403 responses to the Committee's online survey in July-August 2020, 68.1% supported the Bill, 5.8% supported it with amendments, 0.7% were neutral, while 25.4% opposed the Bill. The Bill also attracted support from the peak Christian, Islamic and Jewish bodies in NSW.

Finding 4

The Committee found that the terms of the Bill were valid and succeeded in protecting people of religious faith and no faith from discrimination. From extensive public hearings, however, the Committee found several amendments to be necessary to improve the Bill. We regard the Bill as a useful template for this kind of legislation, but it has a number of shortcomings that need to be corrected.

Finding 5

The Committee found the Bill to be consistent with the structure and purpose of the NSW Anti-Discrimination Act. It provides new protections against discrimination; it does not take any away. As Anglican Bishop Michael Stead said in evidence, “This is not a Bill that protects people of religion if they discriminate and attack others. It’s a Bill that protects them against discrimination.”

Finding 6

The Committee found the Bill does not privilege religion over other protected attributes. It does not create a hierarchy of protections. Indeed, it can be argued that other attributes covered in the Anti-Discrimination Act currently enjoy special treatment because they are protected from speech vilification. This is true of Race (Part 2, Division 3A), Transgender (Part 3A, Division 5), Homosexuality (Part 4C, Division 4) and HIV/AIDS (Section 492XB). The Bill before the Committee has no such protections.

Finding 7

The Committee found that the Bill’s determination of the concept of ‘religious belief’ (genuinely and sincerely held) is consistent with the High Court’s ruling in *Church of the New Faith v Commissioner of Payroll Tax (Vic)* in 1983, and should be adopted in NSW law.

Finding 8

The Committee believes there is utility in applying the Siracusa Principles to each of the attributes covered in the Anti-Discrimination Act, not just for cases involving religious rights. A new clause in ‘Principles of Act’ is needed to ensure equal treatment of all attributes, with the effect that the Siracusa Principles’ conflict-resolution mechanisms are to be applied whenever any right covered by those Principles is concerned.

Finding 9

The Committee was concerned to hear evidence that the complaints-handling functions of Anti-Discrimination NSW are run by clerical staff (not trained lawyers), and that the organisation has been struggling to create proper computerised records. The acceptance of discrimination complaints can be very distressing and expensive for respondents. It should be handled by professional legal expertise. The Committee regards this as a basic competency standard for the NSW legal system.

- 1.10 For these reasons, the Committee recommends that the Government introduce a Bill inserting discrimination on the grounds of religious beliefs or activities as a protected attribute in the Act by the end of 2021.

Recommendation 1

The Committee recommends that the NSW Government introduce a Government Bill inserting discrimination on the grounds of religious belief or activity, where that activity is lawful, as a protected attribute in the *Anti-Discrimination Act 1977 (NSW)* by the end of 2021, and the Committee

recommends using this Bill's definitions of 'religious beliefs' and 'religious activities', the associated definition of 'genuinely believes' in section 22K and the associated interpretive provisions in section 22KA and section 22KB.

Recommendation 2

The Committee recommends that the Government Bill should include the following:

- (a) principles that give equal weight to all protected attributes under the *Anti-Discrimination Act 1977* (NSW) (the Act) while recognising the special characteristics and protection requirements of religion
- (b) reference to relevant international instruments (to the extent ratified) that protect the rights and interests of individuals and protected attributes under the Act
- (c) consideration of relevant recommendations of the Ruddock Review, including having regard to the *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights* to guide the operation of competing rights when limitations are imposed on them
- (d) defined terms for religious beliefs, religious activities and religious organisations
- (e) recognition that religion is an attribute that involves the expression of religious beliefs and lawful actions motivated by religious beliefs and the association of individuals and organisations in accordance with their religious doctrines, tenets, beliefs or teachings
- (f) protection for not-for-profit religious organisations from discrimination on the grounds of religious beliefs or activities by engaging in certain lawful conduct because of their religious doctrines, tenets, beliefs or teachings
- (g) provisions that balance the participation of religious organisations in State functions or programs and universal access to publicly funded goods and services

- 1.11 The Committee recognises that the implementation of these recommendations may have an impact on the functions of Anti-Discrimination NSW (ADNSW). Given this, the Committee recommends that ADNSW be sufficiently resourced to ensure that it can discharge the functions flowing from the recommendations in this report.

Recommendation 3

The Committee recommends that the NSW Anti-Discrimination Board be sufficiently resourced to ensure that it can discharge the functions flowing from the recommendations in this report and the Board employs qualified lawyers (not clerical staff) to discharge its complaints handling responsibilities.

- 1.12 The Committee also notes that in addition to stakeholder's view on the provisions of the Bill, two specific issues regarding the reform of NSW's anti-discrimination laws were raised for consideration. First, a number of stakeholders raised the need to include protection from vilification on the grounds of religious beliefs and activities. This issue is considered in more detail in Chapter 3.
- 1.13 Second, stakeholders suggested a review of the Act to examine any inconsistencies that had arisen through previous amendments and changes that may be required if there is legislative reform by the Commonwealth. However, other stakeholders raised serious concerns that such a review would further delay anti-discrimination protection for religious beliefs and activities that was absent from the NSW law. This issue is considered in more detail in Chapter 3.
- 1.14 The Committee considers that a review of the Act including religious vilification provisions would be beneficial, but that it should not further delay the enactment of anti-discrimination protection for religious beliefs and activities.

Recommendation 4

The Committee recommends that there be a broad-based review to update the *Anti-Discrimination Act 1977 (NSW)* but that this should not delay the NSW Government seeking passage of their Bill through the NSW Parliament. The review should assess the effectiveness of the religious vilification provisions in the *NSW Crimes Act 1900* and whether religious vilification protections are required in the Act.

Anti-discrimination protection in NSW

- 1.15 The *Anti-Discrimination Act 1977* (the Act) contains the anti-discrimination legal framework for New South Wales. The Act makes it unlawful to discriminate in areas of public life against a person on certain grounds, including race, sex, disability, age, marital or domestic status, homosexuality, transgender status or carer responsibilities. The Act also makes it unlawful for vilification on the grounds of race, homosexuality, transgender status or HIV/AIDS status.²
- 1.16 The Act is administered by ADNSW, which is a state government body that administers the Act on behalf of the NSW Anti-Discrimination Board. The NSW Anti-Discrimination Board is an independent statutory body that consists of a President and four Board members.³
- 1.17 The Act does not currently contain provisions that make it unlawful for discrimination on religious grounds. However, the Act does contain some limited protection for religious discrimination and vilification on the grounds of ethno-religious origin.⁴ The term 'ethno-religious origin' is intended to cover groups with a common ethnic identity, and has been found to apply to groups such as Sikhs.

² *Anti-Discrimination Act 1977 (NSW)* Part 2 Division 3A (Racial vilification), Part 3A Division 5 (Transgender vilification), Part 4C Division 4 (Homosexual vilification), Part 4F (HIV/AIDS vilification)

³ The current President of the Board is the Hon Dr Annabelle Bennett AC SC

⁴ *Anti-Discrimination Act 1977 (NSW)* ss4 (definition of 'race'), 20C (Racial vilification unlawful)

Groups without a common ethnic identity, such as Christians and Muslims and other broad-based religions, are unable to seek protection under this provision.⁵

- 1.18 The Act also contains specific provisions for religious bodies, which exempt them from the Act in relation to the ordaining, appointment or training of religious clergy or of any person in any capacity by a body established to propagate religion. The Act also provides exemptions for any act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion.⁶
- 1.19 Given the gap in protection from discrimination on the grounds of religious beliefs and activities, there have been calls for increased protection under the NSW legal framework.

Anti-Discrimination protection and religious freedom in Australia

Religious Freedoms Review

- 1.20 In 2017, the then Prime Minister the Hon. Malcolm Turnbull MP, announced the appointment of an Expert Panel (the Panel) to examine whether Australian law adequately protects the human right to freedom of religion (the Ruddock Review). The Panel consisted of the Hon. Philip Ruddock, Professor Dr Nicholas Aroney, the Hon Dr Annabelle Bennett AC SC, Father Frank Brennan SJ AO and Emeritus Professor Rosalind Croucher AM. The Panel consulted with thousands of individuals and 180 experts and organisations across Australia.
- 1.21 The Panel delivered its report in 2018 and made several findings and recommendations. The Panel distinguished between religious freedom and religious discrimination in its Review. In regard to religious freedom, the Panel found that, overall, Australians enjoy a high degree of religious freedom, and that there are basic legal protections in place at the Commonwealth, State and Territory level. In the absence of any specific laws for the freedom of religion, the Panel noted the importance of exceptions to discrimination laws in the protection of freedom of religion.⁷
- 1.22 The Panel noted improvements to protection for religious freedom could be made through legislative reform at the Commonwealth level, but refrained from explicitly recommending the introduction of a Religious Freedom Act or Commonwealth Human Rights Act. Instead, the Panel recommended that the Commonwealth work with the States and Territories to ensure the implementation of the recommendations of the Review, and that consideration should be given to further Commonwealth legislative solutions if required.⁸ The Panel also encouraged the Commonwealth, State and Territory governments to consider the

⁵ Religious Freedom Review, [Report of the Expert Panel](#), p85; *Haider v Combined District Radio Cabs Pty Ltd t/as Central Coast taxis* [2008] NSWADT 123 [50] (holding that 'Middle Eastern Muslim' is a 'race' within the definition in section 4 of the *Anti-Discrimination Act 1977 (NSW)* as ethno-religious origin); see also *Jones v Scully* (2002) 120 FCR 243, 271-2 (Hely J) (holding that Jews in Australia are a group of people within Australia with an 'ethnic origin' for the purposes of the *Racial Discrimination Act 1975 (Cth)*)

⁶ *Anti-Discrimination Act 1977 (NSW)* s56 (Religious bodies)

⁷ Religious Freedom Review, [Report of the Expert Panel](#), p104

⁸ Religious Freedom Review, [Report of the Expert Panel](#), p104, 108 (Recommendation 20)

appropriateness of existing exceptions in discrimination laws that protect religious freedom.

- 1.23 In regards to religious discrimination, the Panel found that legislative protection from discrimination on the grounds of religion is limited to employment at the Commonwealth level.⁹ It encouraged the review of exceptions for religious bodies from anti-discrimination laws in relation to race, disability, pregnancy or intersex status, considering community expectations, particularly in relation to education.¹⁰
- 1.24 The Panel recommended that steps be taken to amend the *Racial Discrimination Act 1975* (Cth) to include religion as a protected attribute, or, preferably, to develop a Commonwealth Religious Discrimination Act with comprehensive protection against discrimination based on religious belief or activity, including the absence of religious belief.¹¹
- 1.25 The Panel highlighted the importance of balancing religious freedom with conflicting rights and issues of public policy. It considered that the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (the Siracusa Principles) may provide guidance on this issue. The Siracusa Principles provide guidance on the interpretation of limitation clauses within the International Covenant on Civil and Political Rights (ICCPR), including that restrictions on human rights under the ICCPR must meet standards of legality, necessity, proportionality and gradualism.¹²
- 1.26 Therefore, the Panel recommended that Commonwealth, State and Territory governments should have regard to the Siracusa Principles when drafting laws that would limit the right to freedom of religion. The Panel recommended that governments also consider the use of interpretative clauses in anti-discrimination laws to reflect the equal status of all human rights.¹³ The Siracusa Principles are described in more detail in Chapter 2.
- 1.27 The Panel noted that States and Territories have each enacted anti-discrimination laws that operate alongside Commonwealth laws. While other States and Territories provide protection from discrimination on the ground of religious beliefs and activities,¹⁴ NSW and South Australia have limited protection. In South Australia, there is protection for religious dress and appearance.¹⁵ In NSW, there is protection for discrimination on the grounds of race, which is defined as

⁹ Religious Freedom Review, [Report of the Expert Panel](#), p92; Fair Work Act 2009 (Cth) s 351

¹⁰ Religious Freedom Review, [Report of the Expert Panel](#), p104

¹¹ Religious Freedom Review, [Report of the Expert Panel](#), p96 (Recommendation 15)

¹² American Association for the International Commission of Jurists, [Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights](#), April 1985

¹³ Religious Freedom Review, [Report of the Expert Panel](#), pp104-105

¹⁴ *Discrimination Act 1991 (ACT)* s67A (Unlawful vilification - religious conviction); *Anti-Discrimination Act 1996 (NT)* s19 (Prohibited grounds of discrimination – religious belief or activity); *Anti-Discrimination Act 1991 (Qld)* s7 (Discrimination on the basis of certain attributes prohibited – religious belief or religious activity); *Anti-Discrimination Act 1998 (Tas)* s16 (Discrimination on ground of attribute – religious belief or affiliation, religious activity); *Equal Opportunity Act 2010 (Vic)* s84 (Religious belief or activity); *Equal Opportunity Act 1984 (WA)* s53 (religious conviction)

¹⁵ *Equal Opportunity Act 1984 (SA)* s85ZN

including ethno-religious origin.¹⁶ This has been narrowly interpreted as mentioned above.

1.28 The Panel recommended that NSW and South Australia should amend their anti-discrimination laws to make it unlawful to discriminate on the basis of a person's 'religious belief or activity' including on the basis that a person does not hold any religious belief. In doing so, consideration should be given to providing for the appropriate exceptions and exemptions, including for religious bodies, religious schools and religious charities.¹⁷

1.29 Recommendation 20 of the Ruddock Review encouraged the Commonwealth to work with the States and Territories to ensure the issues it raised were implemented:

The Prime Minister and the Commonwealth Attorney-General should take leadership of the issues identified in this report with respect to the Commonwealth, and work with the States and Territories to ensure its implementation. While the Panel hopes it would not be necessary, consideration should be given to further Commonwealth legislative solutions if required.¹⁸

Status of the Commonwealth Bills

1.30 The Australian Government response to the report was released on 13 December 2018. In 2019, the Australian Government commenced two key initiatives for the development of the Commonwealth anti-discrimination legal framework.

1.31 First, the Commonwealth Attorney-General requested the Australian Law Reform Commission (ALRC) conduct an Inquiry into the Framework of Religious Exemptions in Anti-Discrimination Legislation. In its terms of reference, the ALRC is to consider the anticipated effect of the *Religious Discrimination Bill 2019* (Cth) on the operation of Commonwealth, State and Territory anti-discrimination legislation. It is also to examine the interaction between Commonwealth, State and Territory anti-discrimination laws and the desirability of national consistency in religious exemptions in those laws. The current reporting deadline for the inquiry is 12 months after the Religious Discrimination Bill (noted below) is passed by the Australian Parliament.¹⁹

1.32 Second, the Australian Government released a package of three exposure draft Bills – the *Religious Discrimination Bill 2019*, the *Religious Discrimination (Consequential Amendments) Bill 2019*, and the *Human Rights Legislation Amendment (Freedom of Religion) Bill 2019*. The Australian Government has since released second exposure drafts of the three Bills for further consultation, which closed for submissions in January 2020.²⁰ At the time of writing, the Commonwealth draft Bills had not progressed.

¹⁶ *Anti-Discrimination Act 1977 (NSW)* s4 (Definitions – race)

¹⁷ Religious Freedom Review, [Report of the Expert Panel](#), p95 (Recommendation 16)

¹⁸ Religious Freedom Review, [Report of the Expert Panel](#), p108 (Recommendation 20)

¹⁹ Australian Law Reform Commission, *Review into the Framework of Religious Exemptions in Anti-discrimination Legislation*, [Terms of reference](#) April 2019

²⁰ Australian Government, Attorney-General's Department, [Religious Freedom Bills – Second Exposure Drafts \(Consultation\)](#)

Interaction between Commonwealth Bills and NSW laws

- 1.33 Any development of NSW anti-discrimination law in relation to religious freedom must consider how it would interact with the proposed Commonwealth Bills.
- 1.34 Constitutional principles provide that where any state law is inconsistent with a law of the Commonwealth, the Commonwealth law will prevail and the state law will be invalid to the extent of the inconsistency.²¹
- 1.35 The Commonwealth Bills recognise that the current anti-discrimination laws across States and Territories are piecemeal and that the Commonwealth Bills intend to fill this gap by providing comprehensive protections. The Explanatory Notes to the Second Exposure Draft Religious Discrimination Bill 2019 (Cth) state:

Existing federal anti-discrimination legislation advances the rights to equality and non-discrimination for a wide variety of attributes. However, current protections in Commonwealth, state and territory laws for discrimination on the basis of a person's religious belief or activity are piecemeal, have limited application and are inconsistent across jurisdictions. In order to address this gap in Australia's statutory anti-discrimination framework, the Religious Freedom Review recommended that the Commonwealth develop a Religious Discrimination Act to render it unlawful to discriminate on the basis of a person's religious belief or activity.

In implementing this recommendation, this Bill will introduce comprehensive federal protections to prohibit discrimination on the basis of a person's religious belief or activity in a wide range of areas of public life, including in relation to employment, education, access to premises, the provision of goods, services and facilities, and accommodation. This will ensure that all people are able to hold and manifest their faith, or lack thereof, in public without interference or intimidation.²²

- 1.36 Section 62 of the draft *Religious Discrimination Bill 2019* further provides that it does not intend to exclude or limit the operation of State or Territory laws to the extent that those laws are capable of operating concurrently with the Commonwealth Bill.²³
- 1.37 On that basis and given the delay on the Commonwealth Bills, the Committee finds there is no impediment to the NSW Government promptly legislating for protection from religious discrimination for individuals and not-for profit religious organisations.

Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020

- 1.38 On 13 May 2019, the Hon Mark Latham MLC introduced the *Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020* (the Bill) into the Legislative Council.²⁴

²¹ *Commonwealth of Australia Constitution Act 1900*, s109 (Inconsistency of laws)

²² Second Exposure Draft of the Religious Discrimination Bill 2019, [Explanatory Notes](#), p2

²³ [Second Exposure Draft of the Religious Discrimination Bill 2019](#), s62

²⁴ [Anti-Discrimination Amendment \(Religious Freedoms and Equality\) Bill 2020](#)

1.39 The Bill seeks to amend the principal Act to make discrimination on the grounds of a person's religious beliefs or activities unlawful.

1.40 The objects of the Bill are as follows:

Objects of the Bill

- to establish principles of the Act for the purpose of reconciling conflicting human rights and anti-discrimination provisions, using international conventions and other instruments,
- to define religious beliefs and activities in a comprehensive and contemporary way, making religious freedoms and the fair treatment of believers and non-believers possible,
- to prohibit discrimination on the ground of a person's religious beliefs or religious activities in work and other areas, so that religion has protections equal to other forms of discrimination in NSW,
- to prohibit discrimination against people who do not have any religious conviction, belief, opinion or affiliation,
- to provide that a religious ethos organisation is taken not to discriminate on the ground of religious beliefs or religious activities by engaging in certain conduct because of the doctrines, tenets, beliefs or teachings of the religion of the organisation, so as to recognise that religion is integral to the existence and purpose of these organisations; and that religious and associational freedoms are fundamental to a free and democratic society,
- to make it unlawful for an employer, qualifying body or educational authority to restrict, limit, prohibit or otherwise prevent people from engaging in a protected activity, or to punish or sanction them for doing so, or for their associates doing so,
- to ensure the provisions of the Bill extend to discrimination concerning applicants and employees, commission agents, contract workers, partnerships, industrial organisations, qualifying bodies, employment agencies, education, goods and services, accommodation, registered clubs and State laws and programs, and
- to limit exceptions to this part of the Act to those specified, such as for religious ethos organisations and genuine occupational qualifications, rather than encouraging tribunal activism.²⁵

Committee comment

1.41 The Committee recommends these Objects from the Bill's Explanatory Note as a valid approach for a Government Bill.

Overview of stakeholders' views

1.42 The Committee received evidence from a range of stakeholders through submissions, hearings, and online survey responses.

1.43 Views on the Bill varied amongst those who made submissions and appeared at hearings, such as religious and community leaders, and legal practitioners and other professionals. However, there was significant stakeholder support for the inclusion of protection from religious discrimination in NSW anti-discrimination law.

1.44 As part of its inquiry, the Committee resolved to use an online survey process to encourage public participation in an efficient and accessible manner. The

²⁵ Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020, [Explanatory Note](#), p1

Committee received 19,502 individual responses to the survey, and an overview of these responses has been provided in the Committee's Report on the Online Questionnaire.²⁶ This questionnaire asked respondents to indicate their view on the Bill as either support, support with amendments, neutral/undecided, and oppose. Of the responses received, 68.1 per cent of submitters supported the Bill, 25.4 per cent opposed the Bill, 5.8 per cent of submitters supported the Bill with amendments, 0.7 per cent were neutral/undecided, and <1 per cent failed to enter a response.

1.45 The views of the majority of stakeholders who made a submission to the inquiry can be broadly classified as:

- support for the Bill without amendment
- support for the Bill with amendments
- opposition to the Bill.

Support for the Bill without amendment

1.46 Stakeholders who supported the Bill without amendment welcomed its intent to protect religious beliefs and activities from discrimination. The Australian Christian Lobby (ACL) and Reverend Margaret Court AO considered that the objects of the Bill were valid and that the terms of the Bill secured its objectives.²⁷

1.47 Stakeholders, including Professor Michael Quinlan and Professor A Keith Thompson, The Church of Jesus Christ Latter Day Saints, Dr Michael Casey, the Australian Catholic University, ACL, Human Rights Law Alliance (HRLA), Catholic Schools NSW, Institute for Civil Liberties, Christian Schools Australia, Anglican Church Diocese of Sydney, Freedom for Faith, the Presbyterian Church of Australia in the State of NSW, and Dr Bernadette Tobin AO noted that the Bill implemented many elements recommended by the Ruddock Review, such as inclusion of religion in NSW anti-discrimination law and the Siracusa Principles.²⁸

1.48 One particular area of the Bill that was welcomed was the definition of 'religious beliefs' and 'religious activities'. It was argued by Dr Michael Casey that as the Bill's definition of religious belief includes not having a religious belief, then the rights of those with and without religious beliefs are also protected by the religious discrimination provisions in section 22L of the Bill.²⁹ The Bill was viewed as giving religious beliefs a similar level of protection as the other protected attributes

²⁶ *Final report on the online questionnaire – Joint Select Committee on the Religious Freedoms Bill 9 March 2021*, viewed 22 March 2021

²⁷ Submission 78, Australian Christian Lobby, p3; Submission 102, Reverend Margaret Court AO, p1

²⁸ Submission 2, Professor Michael Quinlan and Professor A Keith Thompson, p10; Submission 61, The Church of Jesus Christ Latter Day Saints, pp6-7, 12; Submission 69, Dr Michael Casey, Director, PM Glynn Institute, Australian Catholic University, p3; Submission 78, Australian Christian Lobby, p3; Submission 80, Human Rights Law Alliance, p5; Submission 81, Catholic Schools NSW, p7; Submission 88, Institute for Civil Society, p3; Submission 117, Christian Schools Australia Limited, p1; Submission 120, Anglican Church Diocese of Sydney, pp12-13; Submission 126, Freedom for Faith, p2; Submission 130, The Presbyterian Church of Australia in the State of NSW, p3; Dr Bernadette Tobin AO, Director, Plunkett Centre for Ethics, Australian Catholic University, Transcript of evidence, 23 October 2020, p6

²⁹ Submission 69, Dr Michael Casey, Director, PM Glynn Institute, Australian Catholic University, pp4-5

under the Act, and not unduly privileging it above other rights. It was also argued by ACL that the Bill has a 'simpler definition of religious belief' than the Commonwealth Bills³⁰, and the Australian Association of Christian Schools considered that this could avoid matters of religion being decided by the courts.³¹

- 1.49 Similarly, the Bill's definition of 'religious activities' was viewed by ACL and the Australian Association of Christian Schools as capturing the wide variation of religious activities that allow the expression of religious beliefs, doctrines, tenets and teachings.³²
- 1.50 Supporters also welcomed the focus on 'religious ethos organisations' (REOs) in section 22M, and allowing them to conduct themselves in accordance with their beliefs and teachings. Allowing REOs to undertake their activities without being regarded as discriminatory was seen by the Association of Independent Schools, Dr Michael Casey and ACL as recognising religion as an integral part of the identity and purpose of these organisations.³³
- 1.51 The Bill's introduction of protected activity provisions, that appear in sections 22N, 22S and 22V, were also welcomed by stakeholders as protecting the expression of religious belief outside of the workplace, profession, or educational body. Stakeholders considered such provisions necessary given increasing public pressure on employers to penalise employees that may express their faith, for example, on social media. This is discussed in more detail in Chapter 2.
- 1.52 Stakeholders also noted that the provisions in relation to religious dress, under section 22N(6), would provide a balance between protecting a person's right to wear religious dress in the workplace and an employer's work health and safety requirements. Stakeholders considered this was a consistent approach to that under international human rights law. The issue is discussed in more detail in Chapter 2.
- 1.53 Supportive survey responses argued that the Bill was needed to strike an effective balance between the existing rights in the Act and an individual's religious freedom. The responses noted that a person's freedom to practice their religion should be treated equally to other protected attributes under the Act. A key focus was employment relations, particularly limiting an employer's control over employees who express their religious views outside the workplace.³⁴

Support for the Bill with amendments

- 1.54 Those who supported the Bill, but recommended amendments particularly focussed on the need to clarify definitions in the Bill.

³⁰ Submission 78, Australian Christian Lobby, p4

³¹ Submission 78, Australian Christian Lobby, p4; Submission 111, Australian Association of Christian Schools, p3

³² Submission 5, Australian Christian Alliance, p2; Submission 111, Australian Association of Christian Schools, p3

³³ Submission 26, The Association of Independent Schools of NSW, p1; Submission 69, Dr Michael Casey, PM Glynn Institute, Australian Catholic University, p6; Submission 78, Australian Christian Lobby, p5

³⁴ *Final report on the online questionnaire – Joint Select Committee on the Religious Freedoms Bill 9 March 2021*, viewed 22 March 2021, p3

- 1.55 Amendments were suggested to clarify some of the definitions in section 22K of the Bill. These include amending the Bill's current definition of a REO to limit potential judicial interpretation of 'doctrines, tenets, beliefs or teachings' of a religion.³⁵
- 1.56 Other stakeholders suggested amendments to correct drafting errors and provide clarity around religious protection. For example, stakeholders noted a discrepancy between the provisions relating to protected activity in section 22N, 22S and 22V (relating to employment, qualifying bodies and education, respectively), and the general exception for REOs in section 22M.
- 1.57 The Catholic Bishops of NSW and AMEC suggested that the definitions section 22K should be amended to be consistent with section 22M(1)(c) of the Bill.³⁶
- 1.58 In regards to the proposed principles of the Act, contained in section 3 of the Bill, the Anglican Church Diocese of Sydney suggested including additional international instruments that relate to the other protected attributes under the Act – such as international covenants regarding race, women and disability.³⁷ Given concerns that this section may preference religion over other attributes, a suggestion was made to confine the operation of section 3 (Principles of the Act) to new Part 2B of the Act (protection against discrimination on the grounds of religion).³⁸
- 1.59 Some supporters of the Bill noted that it did not contain vilification provisions based on religious beliefs and activities so as to align the Bill with the Act, which provides protection on the basis of race, sex and other heads of discrimination. While the Act's definition of race (under section 4) includes 'ethno-religious origin', as mentioned previously, it is limited to groups where there is a link between their religion and ethnicity. Muslim representative organisations, including Muslim Women Australia and the Lebanese Muslim Association (LMA), gave evidence that this can mean people from their community have limited recourse when they are subject to vilification.³⁹

Opposition to the Bill

- 1.60 Some stakeholders who opposed the Bill, including Kingsford Legal Centre UNSW, noted that its objects were overlapping and complex, and may be difficult to use as a guide to interpret the Bill.⁴⁰ For example, possible inconsistencies were raised between section 54 of the current Act (regarding acts done under statutory authority) and the Bill.⁴¹ It was also suggested that the terms of the Bill did not

³⁵ Submission 2, Professor Michael Quinlan and Professor A Keith Thompson, pp10-11; Submission 10, FamilyVoice Australia (NSW) p5; Submission 22, The Australian Family Association, p3; Submission 72, Catholic Bishops of NSW and AMEC, p10

³⁶ Submission 72, Catholic Bishops of NSW and AMEC, pp9-10

³⁷ Submission 120, Anglican Church Diocese of Sydney, p13

³⁸ Associate Professor Neil Foster, Board Member of Freedom for Faith, Transcript of evidence, 6 November 2020, p37

³⁹ Submission 59, Muslim Women Australia, p13; Submission 63, Lebanese Muslim Association, pp9-10

⁴⁰ Submission 52, Kingsford Legal Centre UNSW Australia, p4

⁴¹ Answers to additional questions by Members, [The Law Society of NSW](#), 16 December 2020, p2

achieve its objects,⁴² and the objectives would be better achieved through a human rights act.⁴³

- 1.61 Of particular concern was that the Bill extended beyond what was necessary to provide protection from discrimination on the ground of religious beliefs and activities and attempted to provide a right to freedom of religion. In this regard they noted that a right to freedom of religion is distinct from anti-discrimination law, as it creates rights or privileges, rather than prohibiting discrimination against individuals with a particular attribute.⁴⁴
- 1.62 These concerns were specifically raised in relation to section 3 (Principles of the Act), which includes international human rights instruments to which decision-makers under the Act are to have 'fundamental regard'. These stakeholders recommended against including international instruments in the Act.
- 1.63 The Australian Discrimination Law Experts Group (ADLEG) recommended amending the key definitions contained in section 22K, including 'religious beliefs', 'religious activities' and 'genuinely believes' and removing the protected activity (sections 22N, 22V and 22S) as they considered them beyond what was necessary for anti-discrimination protection.⁴⁵ Stakeholders, including Rainbow Families NSW, Inner West Council, Australian Lawyers for Human Rights (ALHR) and ADNSW, also raised particular concerns about the practical implementation of these provisions given they would create inconsistencies with health and safety law and uncertainty about employer obligations.⁴⁶
- 1.64 Concern was also raised about protections for REOs under 22Z when performing any function under a State law or for the purposes of a State program.¹ ALHR, Women's Electoral Lobby NSW (WEL), Professor Simon Rice, Public Interest Advocacy Centre (PIAC), Kingsford Legal Centre UNSW Australia and Mr Ghassan Kassisieh considered that REOs being able to bring claims for religious discrimination is inconsistent with how the anti-discrimination protection operates for other protected attributes that only apply to individuals.⁴⁷
- 1.65 Some stakeholders opposed the Bill outright and recommended that it not proceed through Parliament.

⁴² Submission 38, Dr Peter Stuart, Anglican Bishop of Newcastle, p2

⁴³ Submission 68, Law Society of NSW, p3

⁴⁴ Submission 55, Anti-Discrimination NSW, p5; Submission 56, Public Interest Advocacy Centre, p21; Submission 52, Kingsford Legal Centre UNSW Australia, p6; Submission 68, The Law Society of NSW, p2; Submission 34, Australian Discrimination Law Experts Group, p24

⁴⁵ Submission 34, Australian Discrimination Law Experts Group, pp14-15

⁴⁶ Submission 34, Australian Discrimination Law Experts Group, pp11-15; Submission 1, Dr Arnold and Dr Bonython and Dr Matthews, pp4-7; Submission 4, Rainbow Families NSW, pp11-12; Submission 33, Inner West Council, p2; Submission 54, Australian Lawyers for Human Rights, pp11-12; Submission 55, Anti-Discrimination NSW, p9; Submission 63, Lebanese Muslim Association, pp7-8; Submission 71, Amnesty International Australia, p.19-20; Submission 109, Australian Industry Group, pp3-9

⁴⁷ Submission 54, Australian Lawyers for Human Rights, pp10-11; Submission 123, Women's Electoral Lobby NSW, p6; Professor Simon Rice, Australian Discrimination Law Experts Group, Transcript of evidence, 23 October 2020, p53; Submission 56, Public Interest Advocacy Centre, p16; Submission 52, Kingsford Legal Centre UNSW Australia, pp9-10; Mr Ghassan Kassisieh, Legal Director, Equality Australia, Transcript of evidence, 23 October 2020, p25

- 1.66 For example, the NSW Bar Association recommended that the Bill should not be considered by the NSW Parliament until the Commonwealth Parliament has determined the terms of its religious discrimination Bills.⁴⁸
- 1.67 It was also considered by Dr Luke Beck that the Bill protected criminal and other unlawful conduct under the Bill's definition of religious activities in section 22K and facilitated discrimination in the provision of government services under section 22Z.⁴⁹
- 1.68 Online survey responses opposed to the Bill considered that it failed to adequately balance protection from religious discrimination and its impact on other members of the community. Of particular concern was the mental health and wellbeing of the LGBTIQ+ community, women and children.
- 1.69 Additional concerns included the impact of the Bill on REO employees with personal attributes that did not align with the organisations' religious tenets and the potential for REOs to discriminate in relation to employment and service provision.⁵⁰

⁴⁸ Submission 143, NSW Bar Association, p4

⁴⁹ Submission 20, Dr Luke Beck, pp2-3

⁵⁰ [Final report on the online questionnaire – Joint Select Committee on the Religious Freedoms Bill, 9 March 2021](#), viewed 22 March 2021, pp7-9

Chapter Two – Provisions of the Bill

- 2.1 This chapter will examine the key themes and issues arising from the provisions of the Bill. Key themes focussed on the inclusion of new definitions and protections that the Bill introduced to the *Anti-Discrimination Act 1977* (the Act), including principles of the Act, classifications of REOs, special provisions for religious discrimination and protected activities in employment, qualifying bodies and education, state laws and programs, and the power of the President of ADNSW to grant exemptions.

1. Inserting new principles into the Anti-Discrimination Act (Section 3)

Summary

- 2.2 This section will examine section 3 of the Bill which proposes to introduce, for the first time, principles into the Act for the purpose of reconciling conflicting human rights and anti-discrimination, using international conventions and other guidance.⁵¹
- 2.3 The Committee heard mixed views about this provision. Supportive stakeholders considered that it recognised religion as a human right that should be protected and that the application of the Siracusa Principles could appropriately balance conflicting rights under the Act.
- 2.4 Other stakeholders noted that the provisions departed from the standard anti-discrimination law framework and were more akin to those found in a human rights act. These stakeholders also raised concern that specific reference to Article 18(3) of the International Covenant on Civil and Political Rights (ICCPR) may elevate the protection of religion over other rights. Others suggested that these concerns could be addressed by confining these principles to proposed Part 2B on discrimination on the ground of religion.

Committee comment

- 2.5 The Committee notes that section 3 is proposed to apply across all protected attributes including disability, sex, race, age, marital or domestic status, homosexuality and transgender status. It would mean decision makers must have ‘fundamental regard’ to the specified international human rights instruments when making determinations under the Act and that this may create grounds for judicial review of decisions in carrying out functions and making determinations under the Act.
- 2.6 The Committee considers that the Government Bill could include relevant international human rights instruments, based on the NSW Government priorities and legislative agenda. Australia's ratification of the ICCPR includes partial

⁵¹ The original section 3 was repealed in 1985 and contained an outline of the provisions within the Bill. See [NSW Legislation](#)

reservations in relation to Articles 10, 14 and 20 and this would need to be acknowledged.

2.7 The Jewish Board of Deputies and the Anglican Church Diocese of Sydney suggested that additional international human rights instruments could include the following:⁵²

- (a) International Covenant on Economic, Social and Cultural Rights
- (b) International Convention on the Elimination of All Forms of Racial Discrimination
- (c) Convention on the Elimination of All Forms of Discrimination against Women
- (d) Convention on the Rights of the Child
- (e) Convention on the Rights of Persons with Disabilities
- (f) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- (g) United Nations Declaration on the Rights of Indigenous Persons

2.8 The Committee notes that referencing the Siracusa Principles aligns with the Ruddock Review's recommendation that regard should be had to them when drafting laws that limit the right to freedom of religion. While the Siracusa Principles have not been formally adopted by Australian law, this does not appear to preclude them from being used by courts, legislators or decision makers.

2.9 The Committee acknowledges that the Siracusa Principles provide a framework to moderate between competing rights and there would be benefit to applying them to the attributes covered in the Act.

2.10 The Committee considers that the Government Bill should specifically state that the protection for religious beliefs and activities does not limit or restrict the operation of any other part of the Act.

Stakeholders' views

Human rights instruments within an anti-discrimination framework

2.11 Various stakeholders, including the Anglican Church Diocese of Sydney, Freedom for Faith, Professor Michael Quinlan and Professor A Keith Thompson, the Church of Jesus Christ Latter Day Saints, Dr Michael Casey and the Australian Catholic University acknowledged that section 3 introduced international law into State law, and recognised religion as a human right.⁵³ Stakeholders commented that the intent of the provisions was to address the relevant recommendations of the

⁵² Submission 23, NSW Jewish Board of Deputies, p3; Submission 120, Anglican Church Diocese of Sydney, p13

⁵³ Submission 120, Anglican Church Diocese of Sydney, pp12-13; Submission 126, Freedom for Faith, p2; Submission 2, Professor Michael Quinlan and Professor A Keith Thompson, p8; Submission 61, The Church of Jesus Christ Latter Day Saints, p5; Submission 69, Dr Michael Casey, Director, PM Glynn Institute, Australian Catholic University, p3

Ruddock Review,⁵⁴ as noted in the Second Reading Speech.⁵⁵ These recommendations stated:

Recommendation 2

Commonwealth, State and Territory governments should have regard to the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights when drafting laws that would limit the right to freedom of religion.

Recommendation 3

Commonwealth, State and Territory governments should consider the use of objects, purposes or other interpretive clauses in anti-discrimination legislation to reflect the equal status in international law of all human rights, including freedom of religion.⁵⁶

- 2.12 Several stakeholders, including Professor Michael Quinlan and Professor A Keith Thompson, Church of Jesus Christ Latter Day Saints, Dr Michael Casey, ACL, HRLA, Catholic Schools NSW, Institute for Civil Society, Christian Schools Australia, Anglican Church Diocese of Sydney, Freedom for Faith, Presbyterian Church of Australia in the State of NSW and Dr Bernadette Tobin AO, endorsed the Siracusa Principles as providing a guide for appropriately balancing or limiting certain human rights, especially freedom of religion, where they may conflict with other human rights.⁵⁷ They considered that including the Siracusa Principles would reflect Australia's international human rights obligations to protect the freedom to practice religion.⁵⁸
- 2.13 The Anglican Church Diocese of Sydney highlighted that the Ruddock Review had described the Human Rights Committee's and European Court's approach to limitations on freedom of religion as broadly consistent with the Siracusa Principles. By including the Siracusa Principles, the Diocese stated that it would 'ensure that all human rights are accorded equal status in NSW, in accordance with international law'.⁵⁹
- 2.14 The Diocese supported the inclusion of other international instruments to which Australia is a signatory in the Bill and that Australia's ratification of the ICCPR includes partial reservations in relation to Articles 10, 14 and 20, which should be acknowledged.⁶⁰

⁵⁴ Religious Freedom Review, [Report of the Expert Panel](#), 2018

⁵⁵ The Hon. Mark Latham MLC, Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020, [Second Reading Speech](#), 13 May 2020, viewed 22 March 2021

⁵⁶ Religious Freedom Review, [Report of the Expert Panel](#), 2018, pp1, 46

⁵⁷ Submission 2, Professor Michael Quinlan and Professor A Keith Thompson, p9; Submission 61, Church of Jesus Christ Latter Day Saints, pp12-13; Submission 69, Dr Michael Casey, p2; Submission 78, Australian Christian Lobby, p3; Submission 80, Human Rights Law Alliance, p5; Submission 81, Catholic Schools NSW, p6; Submission 88, Institute for Civil Society, p3; Submission 117, Christian Schools Australia, p2; Submission 120, Anglican Church Diocese of Sydney, p12; Submission 126, Freedom for Faith, p2; Submission 130, Presbyterian Church of Australia in the State of NSW, p3; Dr Bernadette Tobin AO, Director, Plunkett Centre for Ethics, Australian Catholic University, Transcript of evidence, 23 October 2020, p6

⁵⁸ Mr Mahmud Hawila, Adviser, Lebanese Muslim Association, Transcript of evidence, 16 November 2020, p35

⁵⁹ Submission 120, Anglican Church Diocese of Sydney, pp12-13

⁶⁰ Submission 120, Anglican Church Diocese of Sydney, p13

- 2.15 Freedom for Faith submitted that the provision implemented the Ruddock Review recommendations and that the Siracusa Principles recognise that "freedom of religion is a fundamental human right which can only be restricted where necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others".⁶¹
- 2.16 Christian Schools Australia supported the provision as it would "greatly assist in the understanding of the Act as a whole and, particularly the need for "balancing rights" and that the "extensive and established international jurisprudence provides a sound basis for such a process".⁶²
- 2.17 Other stakeholders, including The Law Society of NSW, Anti-Discrimination NSW, Kingsford Legal Centre UNSW, ADLEG and Amnesty International Australia, were concerned that the Bill did not properly implement the recommendations of the Ruddock Review. In their view, the imposition of a human rights framework in an anti-discrimination context was not appropriate.⁶³
- 2.18 ADNSW, the peak anti-discrimination body and tribunal in NSW, raised significant concerns with section 3 of the Bill. ADNSW asserted that "consideration of relevant international human rights instruments should take place in the drafting of legislation, rather than in the daily exercise of ADNSW's functions". ADNSW considered that the requirement for it to consider international human rights instruments when making determinations under the Act would impose a large resource burden on its staff and would require "a significant increase in funding and resources to secure skilled staff to carry out these increased functions".⁶⁴
- 2.19 Professor Simon Rice, of ADLEG, argued that the Bill represented an "entirely different approach" to the existing anti-discrimination legislative framework because it invokes concepts of freedom that belong in a human rights context. It was asserted that the Ruddock Review distinguished between religious discrimination laws and religious freedoms laws, whereas the Bill merged the two.⁶⁵
- 2.20 Other stakeholders, including The Law Society of NSW, PIAC and ADLEG, noted that the inclusion of the Siracusa Principles was limited to the interpretation of Article 18(3) of the ICCPR, which would elevate the right to freedom of religion.⁶⁶ For example, Kingsford Legal Centre UNSW argued that section 3 conflated the rights to freedom of religion and freedom from discrimination on the ground of religion, which would "limit the usefulness of existing legal guidance on how the two rights

⁶¹ Submission 126, Freedom for Faith, p2

⁶² Submission 117, Christian Schools Australia Limited, p2

⁶³ Submission 55, Anti-Discrimination NSW, pp4-5; Submission 52, Kingsford Legal Centre UNSW, p5; Submission 68, The Law Society of NSW, p2; Submission 71, Amnesty International Australia, p8; Submission 34, Australian Discrimination Law Experts Group, p25

⁶⁴ Submission 55, Anti-Discrimination NSW, p5

⁶⁵ Professor Simon Rice, Member, Australian Discrimination Law Experts Group, Transcript of evidence, 23 October 2020, p44

⁶⁶ Submission 34, Australian Discrimination Law Experts Group, p25; Submission 68, The Law Society of NSW, p2; Ms Maria Nawaz, Deputy Chair, Human Rights Committee, The Law Society of NSW, Transcript of evidence, 6 November 2020, p19; Submission 56, Public Interest Advocacy Centre, p19; Mr Jonathon Hunyor, Chief Executive Officer, Public Interest Advocacy Centre, Transcript of evidence, 23 October 2020, p46

work in practice and introduce significant confusion into NSW discrimination law".⁶⁷

- 2.21 Dr Bruce Arnold, Dr Wendy Bonython and Dr Richard Matthews also noted that the Siracusa Principles are a guide to interpreting the limitation clauses under the ICCPR by considering "standards of proportionality; legality; evidence-based necessity; and gradualism".⁶⁸ While this provides international jurisprudence on these articles, Rape and Domestic Violence Services Australia pointed out that there were additional sources of guidance on the application of limitations to human rights, including the Charter of the United Nations, the Human Rights Committee and the reports of the Special Rapporteur on freedom of religion and belief. They argued that precedence should not be given to the Religious Discrimination Declaration over other treaties and conventions signed by Australia.⁶⁹
- 2.22 ADLEG suggested that in order to afford protection to other human rights, such as the rights of women, children, disabled persons and protection from racial discrimination, other relevant human rights instruments to which Australia is a signatory should also be included.⁷⁰ The Anglican Church Diocese of Sydney and the NSW Jewish Board of Deputies also recommended including additional international covenants.⁷¹
- 2.23 While expressing his general support for the Bill at a public hearing, Associate Professor Neil Foster, Board Member of Freedom for Faith, proposed that "subsection 3(2) perhaps ought not to be there but would be better placed at the beginning of part 2B—that is, the reference to Article 18 is particularly in reference to religious freedom rights and that is the one that is addressed by the new part 2B".⁷²

Balancing religious rights with other protected attributes in the Act

- 2.24 Several stakeholders were concerned about whether the inclusion of section 3 would adequately balance protection from discrimination on the ground of religion and other protected attributes under the Act. This includes protection from discrimination on the ground of disability, sex, marital status, age, race and transgender status.
- 2.25 Stakeholders in support of this approach, including Dr Bernadette Tobin of the Plunkett Centre for Ethics, Dr Michael Casey of the PM Glynn Institute, Catholic Bishops of NSW and AMEC, Freedom for Faith, the Presbyterian Church of Australia in the State of NSW and the Church of Scientology generally considered that it

⁶⁷ Submission 52, Kingsford Legal Centre UNSW Australia, p5

⁶⁸ Submission 1, Dr Arnold, Dr Bonython and Dr Matthews, p9

⁶⁹ Submission 49, Rape and Domestic Violence Services Australia, p3

⁷⁰ Submission 34, Australian Discrimination Law Experts Group, p25

⁷¹ Submission 120, Anglican Church Diocese of Sydney, p13; Submission 23, NSW Jewish Board of Deputies, p3

⁷² Associate Professor Neil Foster, Board Member of Freedom for Faith, Transcript of evidence, 6 November 2020, p37

would protect persons from anti-religious discrimination and balance the conflicts between other protected attributes.⁷³

- 2.26 Freedom for Faith noted their support because it "recognises that freedom of religion is a fundamental human right which is equal with other rights such as equality, and provides a mechanism for balancing competing rights rather than privileging any one right".⁷⁴
- 2.27 Dr Bernadette Tobin stated that the Bill appropriately recognised that "genuine human rights (such as the right to freedom of religious belief or activity) can conflict with other genuine human rights, and it supplies a reliable mechanism for the principled resolution of such conflict".⁷⁵
- 2.28 Furthermore, in the answer to Question 1 on notice to Dr Bernadette Tobin of the Plunkett Centre she stated:
- ...The Bill should be written in such a way that a NSW judge would not and could not hold herself out as a theological authority. For this reason I recommend that the Bill define a religious ethos organisation as one that is 'conducted in accordance with, or for the furthering/furtherance/development of, the doctrines, tenets, beliefs or teachings of a particular religion...'⁷⁶
- 2.29 Dr Michael Casey acknowledged that it is a difficult and complex task to balance different rights, and that inclusion of the Siracusa Principles in the Principles of the Act would assist decision makers in balancing these rights.⁷⁷
- 2.30 However, the Committee also received evidence that section 3 would elevate protection of religion over other protected attributes under the Act. Opposition to the proposed Principles were based on referencing only selected international instruments relating to religion and not international human rights instruments related to other protected attributes in the Act.
- 2.31 Concern also related to the specific reference to Article 18(3) of the ICCPR, which provides that freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.⁷⁸ Stakeholders, including the NSW Bar Association, Diversity Council Australia (DCA), PIAC, the NSW Society of Labor Lawyers, Dying with Dignity NSW, Rainbow Families and Family Planning NSW, suggested that the reference would mean that religion

⁷³ Submission 44, Dr Bernadette Tobin AO, Plunkett Centre for Ethics, pp2-3; Dr Michael Casey, Director, PM Glynn Institute, Australian Catholic University, Transcript of evidence, 23 October 2020, p.4; Submission 72, Catholic Bishops of NSW and AMEC, p15; Submission 126, Freedom for Faith, p2; Submission 130, Presbyterian Church of Australia in the State of NSW, p4; Submission 144, Church of Scientology, p16

⁷⁴ Submission 126, Freedom for Faith, p2

⁷⁵ Submission 44, Dr Bernadette Tobin AO, Plunkett Centre for Ethics, p3

⁷⁶ Answers to questions on notice, Dr Bernadette Tobin, Plunkett Centre for Ethics, 5 November 2020, p1, viewed 22 March 2021

⁷⁷ Dr Michael Casey, Director, PM Glynn Institute, Australian Catholic University, Transcript of evidence, 23 October 2020, p4

⁷⁸ United Nations Human Rights, Office of the High Commissioner, [International Covenant on Civil and Political Rights](#), 16 December 1966, Article 18(3), viewed 22 March 2021

would be prioritised over other protected attributes that did not have equivalent human rights instruments included in the Principles of the Act.⁷⁹

- 2.32 A number of stakeholders, including ALHR, PIAC and the Diversity Council of Australia, argued that inclusion of selected human rights instruments contradicted the principles of international human rights law that all human rights are universal, and undermined the existing protections in the Act in favour of religious freedom.⁸⁰
- 2.33 The Committee heard from LGBTIQ+ and gender rights advocacy groups who also believed that the proposed Principles of the Act would elevate religion above other rights.
- 2.34 Rainbow Families stated that because the provision required decision makers to give fundamental regard to any limitations on religious belief or activity, it gave "precedence to religion above other human rights, which is not proportionate, and would be detrimental to our families".⁸¹
- 2.35 The Buddhist Council of NSW and Rainbohdi LBGQTQA+ Buddhist Community was concerned that the Bill "does not sit in balance with the need to protect other human rights and is at risk of elevating the religious rights of particular groups above other human rights of all people in NSW".⁸²
- 2.36 The NSW Jewish Board of Deputies acknowledged that there were concerns that the Bill may conflict with other sections in the Act, and therefore it was necessary to explicitly state that the Bill's provisions would not limit or otherwise affect the operation of any existing provisions of the Act.⁸³

Relevant provision

3 Principles of Act

(1) In carrying out functions and making determinations under this Act, the Minister, Board, President, Tribunal and Courts shall have fundamental regard to the following—

- (a) the International Covenant on Civil and Political Rights,
- (b) the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, proclaimed by the UN General Assembly on 25 November 1981; and
- (c) the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights.

(2) In particular, in interpreting the requirement of the International Covenant on Civil and Political Rights, Article 18(3), that limitations upon a person's right to manifest their

⁷⁹ Submission 143, NSW Bar Association, p6; Submission 7, Diversity Council of Australia, p10; Submission 56, Public Interest Advocacy Centre, p20; Submission 87, NSW Society of Labor Lawyers, p2; Submission 31, Dying with Dignity NSW, p2; Submission 4, Rainbow Families, p7; Submission 57, Family Planning NSW, p2

⁸⁰ Submission 54, Australian Lawyers for Human Rights, p18; Submission 56, Public Interest Advocacy Centre, p19; Submission 7, Diversity Council Australia, p10

⁸¹ Submission 4, Rainbow Families NSW, p7

⁸² Submission 67, Buddhist Council of NSW and Rainbohdi LBGQTQA+ Buddhist Community, p7

⁸³ Submission 23, NSW Jewish Board of Deputies, p6

religion or belief must only be made where such are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others, the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights provide that limitations must, amongst other matters—

- (a) be prescribed by law,
- (b) respond to a pressing public or social need,
- (c) pursue a legitimate aim and be proportionate to that aim, and
- (d) be applied using no more restrictive means than are required for the achievement of the purpose of the limitation.

(3) So far as it is possible to do so consistently with their purpose, all provisions of this Act must be interpreted in a way that is compatible with the international instruments referred to in subsection (1).

Committee comment

- 2.37 The Committee recommends the legislative approach in this Relevant Provision as suitable for a Government Bill, with the following four amendments:
- a) Australia’s ratification of the ICCPR includes partial reservations in relation to Articles 10,14 and 20, which should be acknowledged in the wording of ‘Principles of Act’, so that (1)(a) now reads: ‘the International Covenant on Civil and Political Rights (to the extent that it has been ratified by Australia)’. This amendment was suggested in the Anglican Church, Diocese of Sydney submission.
 - b) In ‘3. Principles of the Act’ (page 3 of the Bill), the Government should include additional international human rights conventions, based on interstate experience and its own human rights priorities and legislative agenda. An indicative list was provided to the Committee on page 13 of the Anglican Church Diocese of Sydney submission and also page 3 of the NSW Jewish Board of Deputies submission.
 - c) Under 3. Principles of Act, renumber (3) to (4) and insert new (3) as follows: ‘To ensure equal treatment of the attributes protected under all Parts of the Act, the Siracusa Principles shall be used whenever limitations on the rights protected by those Principles are imposed under the Act.’
 - d) Insert new subsection (5) in 3. Principles of Act: ‘For the avoidance of doubt, nothing in Part 2B of the Act excludes, qualifies, limits or restricts the operation of any provision of any other part of the Act, other than in accordance with the Principles set out in this clause 3, including the Siracusa Principles.’

2. Definitions, religious activities and beliefs, and religious discrimination (Sections 22K, 22KA, 22KB and 22L)

Summary

- 2.38 This section details the new definitions introduced by the Bill including 'religious belief', 'religious activities' and 'genuinely believes' (section 22K), determining when a belief is held and what it includes (section 22KA and 22KB), and what constitutes discrimination on the ground of religious belief (22L).

- 2.39 A key issue raised by stakeholders was whether the provisions are too narrow to capture all forms of religious practice and belief, or conversely, too wide, thereby capturing beliefs and activities that should not be protected.

Committee comment

- 2.40 The Committee recognises that religion is an attribute that involves the expression of religious belief and the association of individuals and organisations in accordance with their religious doctrines, tenets and teachings. In this regard, a Government Bill should also recognise these unique aspects of religion as a protected attribute.
- 2.41 The Committee considered the question of what constitutes discrimination on religious grounds, set out in the Bill, by reference to the new definitions of ‘religious activities’, ‘religious beliefs’ and ‘genuinely believes’.
- 2.42 The Committee noted that the definition of religious beliefs included having a religious conviction, belief, opinion or affiliation, and also *not* having any religious conviction, belief, opinion or affiliation. In this way, the Bill seeks to extend protection to individuals from discrimination on the ground of *not* having a religious belief.
- 2.43 The Committee noted stakeholder concerns regarding the definition of religious activities and that it may protect unlawful actions. Subsection 22K(1) defines ‘religious activities’ so as to “not include any activity that would constitute an offence punishable by imprisonment under the law of NSW or the Commonwealth.” It was argued that the Bill could provide protection for other offences conducted in the name of religion.
- 2.44 For the avoidance of doubt, the Committee considers the a Government Bill should therefore only refer to ‘lawful religious activities’ as a protected attribute.
- 2.45 The Committee further considered the implications of determining when a belief is held by a person, and noted the use of the subjective ‘genuine belief’ test within the Bill. The Committee considers that it is appropriate for the Government Bill to provide that a court or tribunal has regard to the genuineness of the belief held by a person.

Stakeholders' views

Religious activities

- 2.46 Stakeholders in support of this definition, including the Australian Christian Alliance (ACA) and the Australian Association of Christian Schools, considered that it was appropriate to capture the subjective and diverse nature of religious activities.⁸⁴
- 2.47 The Baptist Association of NSW and ACT noted their strong support for the inclusion of this definition of religious activities as it recognised that religious

⁸⁴ Submission 5, Australian Christian Alliance, p2; Submission 111, Australian Association of Christian Schools, p3

practice extends beyond a place of worship and represents a person's choices and actions taken or not taken in the community and the workplace.⁸⁵

- 2.48 The Anglican Church Diocese of Sydney noted that the Bill defined the boundaries of what may legitimately be considered religious activities. The Diocese considered that the definition of religious belief did not authorise religious activities that breach civil obligations, such as breaches of contract and tort laws, professional obligations and anti-discrimination and vilification obligations.⁸⁶
- 2.49 However, other stakeholders had concerns about the impact of a wide definition of religious activities, especially as it is a key concept that appears throughout the Bill.
- 2.50 In particular, many stakeholders, including ADNSW, ADLEG, the Law Society of NSW, Rape and Domestic Violence Services Australia, ALHR, Equal Voices, Community Legal Centres NSW, PIAC, Equality Australia and the NSW Council for Civil Liberties (NSWCCL) noted that the only exclusion from the definition of religious activities were offences punishable by imprisonment under NSW or Commonwealth law.⁸⁷ Concern was expressed that this would allow a religious activity to include unlawful activities that carry lesser penalties, including bullying, harassment, tortious acts and, breaches of contract, consumer or corporations laws.⁸⁸ Similarly, it was noted by NSW Young Lawyers that activities motivated by religious belief may include activities not religious in nature or contemplated by international law.⁸⁹
- 2.51 The NSW Council of Civil Liberties (NSWCCL) also noted that the Bill's definition of religious activity is not consistent with the approach taken by the proposed Commonwealth Bills, which excludes protection for religious activities that are unlawful.⁹⁰
- 2.52 ADLEG recommended that all unlawful acts should be excluded from the definition of religious activities, regardless of the potential punishment.⁹¹
- 2.53 ADNSW was particularly concerned that the broad definition of religious activities was only limited by activities punishable by imprisonment. In its view, this would make it challenging for both ADNSW and the community to identify the limits to conduct that could be defended. ADNSW noted that as the Bill does not impose a test of reasonableness or good faith and includes activities "motivated by" religious belief, it may be possible that "discrimination and vilification could be

⁸⁵ Submission 42, Baptist Association of NSW and ACT, p2

⁸⁶ Submission 120, Anglican Church Diocese of Sydney, p15

⁸⁷ Submission 55, Anti-Discrimination NSW, p6; Submission 34, Australian Discrimination Law Experts Group, p9; Submission 68, The Law Society of NSW, p4; Submission 49, Rape and Domestic Violence Services Australia, p5; Submission 54, Australian Lawyers for Human Rights, p17; Submission 36, Equal Voices, p2; Submission 50, Community Legal Centres NSW, p4; Submission 56, Public Interest Advocacy Centre, pp7-8; Submission 122, New South Wales Council for Civil Liberties, p10; Submission 51, Equality Australia, pp15-17

⁸⁸ Submission 34, Australian Discrimination Law Experts Group, pp9-10; Submission 54, Australian Lawyers for Human Rights, p17; Submission 68, The Law Society of NSW, pp3-5

⁸⁹ Submission No 86, NSW Young Lawyers, p5

⁹⁰ Submissions 122, New South Wales Council for Civil Liberties, p10

⁹¹ Submission 34, Australian Discrimination Law Experts Group, p10

defended as religious activity, provided it was motivated by that person's subjective religious belief".⁹²

- 2.54 The Department of Communities and Justice (DCJ) observed that the Bill's potential to protect unlawful acts departed from the Commonwealth Bills, which only protect lawful activities.⁹³ DCJ stated that the Bill's definition of 'religious activities' would mean that "a religious activity that amounts to vilification or discrimination under any of the grounds in [the Act], such as homosexual or racial vilification, would fall within the definition of religious activity while at the same time being unlawful under [the Act]".⁹⁴
- 2.55 However, the Committee also heard from stakeholders who disagreed with this proposition. Bishop Michael Stead of the Anglican Church Diocese of Sydney, said that "22K does not provide protection for all religious activities. It provides a definition of what a religious activity is".⁹⁵ Bishop Stead noted that what is reasonable or unreasonable to protect an activity would be determined by other relevant provisions. In cases of discrimination, a reasonableness test would be applied to consider whether a religious activity should be a protected religious activity. Bishop Stead contended that although something may be defined as a religious activity, it may not be protected in some circumstances.
- 2.56 Associate Professor Foster added that the Bill is set out in the context of section 54 of the Act, which provides that nothing in the Act will render unlawful anything done by a person if it was necessary for the person to do in order to comply with a requirement of any other Act, regulation, or order of a court or Tribunal.⁹⁶ Consequently, he asserted that the amending provisions would not override the provisions of other laws⁹⁷ since the Bill has been designed to only provide protection from religious discrimination, not protection from prosecution or the ability to be prosecuted or brought to account for other actions.⁹⁸

Religious beliefs

- 2.57 'Religious beliefs' are defined as having a religious conviction, belief, opinion or affiliation, as well as not having any religious conviction, belief, opinion or affiliation.⁹⁹ Section 22KB further provides that religious beliefs or activities include past, future and presumed religious beliefs or activities.
- 2.58 Supporting stakeholders considered that this definition was appropriate to capture the broad nature of religious beliefs.

⁹² Submission 55, Anti-Discrimination NSW, p6

⁹³ Submission 45, Department of Communities and Justice, p15; Second exposure draft, Religious Discrimination Bill 2019 (Cth), [Explanatory Notes](#), p11, viewed 22 March 2021

⁹⁴ Answers to additional questions by Members, [Mr Paul McKnight, Deputy Secretary, Department of Communities and Justice](#), p3 (Question 1), 29 January 2021, viewed 22 March 2021

⁹⁵ Bishop Michael Stead, Bishop of South Sydney, Anglican Church Diocese of Sydney, Transcript of evidence, 6 November 2020, p32

⁹⁶ *Anti-Discrimination Act 1977* (NSW), s54

⁹⁷ Associate Professor Foster, Freedom for Faith, Transcript of evidence, 6 November 2020, p34

⁹⁸ Associate Professor Foster, Freedom for Faith, Transcript of evidence, 6 November 2020, p35

⁹⁹ Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020, s22K

- 2.59 The Anglican Church Diocese of Sydney noted that the broad definition of religious belief in the Bill meant that there is no category of person whose religious beliefs are not protected by the Bill.¹⁰⁰
- 2.60 Professor Michael Quinlan and Professor A Keith Thompson noted Australia is a pluralist, multi-faith, multi-racial society and that there is an increasing diversity of religious beliefs within the NSW population.¹⁰¹ The fact that the Bill has an inclusive definition of religious belief therefore serves the diversity of religions and beliefs within NSW.
- 2.61 Stakeholders, including the Baptist Association of NSW and ACT, the Catholic Bishops of NSW and AMEC and NSW Young Lawyers, also noted that the definition of religious belief included *not* having a religious belief, which recognised the individual freedom to hold or not hold religious beliefs.¹⁰²
- 2.62 Dr Michael Casey noted that in doing so, the Bill upheld respect for individual freedom to form their own convictions:
- A central element of religious freedom is the right to hold or not to hold religious beliefs, to adopt or reject religious beliefs, and to change religious beliefs. Religious freedom is often described as an indispensable foundation for a free society because it protects the freedom of individuals to form their own convictions about the ultimate meaning and reality of things, and to order their lives in a way which is consistent with what they believe the truth to require. Whether the answers we give to these questions are religious or non-religious, they must be freely thought and freely embraced. They cannot be imposed or coerced, as they have been by both religious and secular authorities throughout history.¹⁰³
- 2.63 However, others held that the wide definition of religious belief could be problematic. ADNSW was concerned that the broad definitions of religious beliefs and activities would make it challenging to establish any characteristics due to the subjective and broad definition of religious beliefs, which may include personal belief systems not generally recognised by established religions.¹⁰⁴ As religion itself is not defined, and because discrimination law is generally interpreted broadly, ADNSW considered that this may allow protection for a wide range of belief systems that could include sects and cults.¹⁰⁵
- 2.64 Concerns were also raised about the definition of religious belief including beliefs that may be held in the future and the practicalities of how this could be implemented or tested.¹⁰⁶ ADNSW noted that while the definition appeared to

¹⁰⁰ Submission 120, Anglican Church Diocese of Sydney, p14

¹⁰¹ Submission 2, Professor Michael Quinlan and Professor A Keith Thompson, pp4-5

¹⁰² Submission 42, Baptist Association of NSW and ACT, p2; Submission 72, Catholic Bishops of NSW and AMEC p9; Submission 69, Dr Michael Casey, Director, PM Glynn Institute - Australian Catholic University, p4; Submission 86, NSW Young Lawyers, p6

¹⁰³ Submission 69, Dr Michael Casey, Director, PM Glynn Institute, Australian Catholic University, p4

¹⁰⁴ Submission 55, Anti-Discrimination NSW, p8

¹⁰⁵ Submission 55, Anti-Discrimination NSW, p5

¹⁰⁶ Submission 86, NSW Young Lawyers, p8; Submission 87, New South Wales Society of Labor Lawyers, p3; Submission 58, Ambrose Centre for Religious Liberty, p10; Submission 54, Australian Lawyers for Human Rights, p16

mirror language from the Act's disability discrimination provisions (under section 49A), it was concerned about how 'future beliefs' could be determined.¹⁰⁷

- 2.65 DCJ noted that the provisions for 'future belief' appear to mirror a provision that applies to disability discrimination under section 49A of the Act.¹⁰⁸ That section provides that a reference to a disability includes a disability that a person will have in the future, or that is thought a person will have in the future (whether or not the person in fact will have the disability).¹⁰⁹
- 2.66 Such protection is provided in relation to disability where, for example, a person's individual or family medical history may indicate an inevitable future disability or diagnosis.¹¹⁰
- 2.67 ADLEG noted that other state and territory jurisdictions do not have a corresponding provision regarding future religious beliefs in their anti-discrimination legislation.¹¹¹

Interpretation of genuine belief

- 2.68 To determine when a person holds a religious belief, it must be established that the person genuinely believes the belief under section 22KA. The Bill defines 'genuinely believes' to mean that the person's holding of the religious belief is sincere and not fictitious, capricious or an artifice (section 22K). This approach is referred to as a 'sincerity test' and gives effect to the approach in *the Church of the New Faith case*.¹¹²
- 2.69 The Explanatory Note states that this test does not interfere with the ability to impose legitimate limitations on religious activities, as allowed elsewhere in the Act and the proposed Part.¹¹³
- 2.70 This approach is similar to that taken in the draft Commonwealth Religious Discrimination Bill 2019, which does not seek to define the concept of religion or religious belief and activities. Instead, the Commonwealth Bill intends to capture genuine religious belief and not belief systems that are unrelated to religion "such as pacifism or veganism, or beliefs which are motivated by criminal intent".¹¹⁴ The concept of religious belief or activity is not intended to only protect the beliefs or activities of a religion as a whole (such as Christianity or Islam) but is intended to also protect beliefs and activities of different denominations or sects within a particular religion.¹¹⁵

¹⁰⁷ Submission 55, Anti-Discrimination NSW, p8

¹⁰⁸ Submission 45, Department of Communities and Justice, p10

¹⁰⁹ *Anti-Discrimination Act 1977 (NSW)*, s49A (Disability includes past, future and presumed disability)

¹¹⁰ Submission 68, The Law Society of NSW, pp4-5; Ms Maria Nawaz, The Law Society of NSW, Transcript of evidence, 6 November 2020, p18

¹¹¹ Submission 34, Australian Discrimination Law Experts Group, p8

¹¹² Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020, [Explanatory Note](#), p2, viewed 22 March 2021; *Church of the New Faith v Commissioner for Pay-roll Tax (Vic)* [1983] HCA 40

¹¹³ [Explanatory Note to the Anti-Discrimination Amendment \(Religious Freedoms and Equality\) Bill 2020](#), p2, viewed 22 March 2021

¹¹⁴ Second exposure draft, Religious Discrimination Bill 2019 (Cth), [Explanatory Notes](#), p11, viewed 22 March 2021

¹¹⁵ Second exposure draft, Religious Discrimination Bill 2019 (Cth), [Explanatory Notes](#), p11, viewed 22 March 2021

- 2.71 However, the Commonwealth Bills propose a reasonableness test. For instance, the Commonwealth Bill includes a general exception for discrimination against a person where a reasonable person would conclude that the person has expressed a particular belief that is promoting or encouraging conduct that would constitute a serious criminal offence.¹¹⁶
- 2.72 Supporters of the Bill, including The Church of Jesus Christ Latter Day Saints, Catholic Bishops of NSW and AMEC, ACL, HRLA, Australian Association of Christian Schools, the Anglican Church Diocese of Sydney and Freedom for Faith, noted that its requirement of 'genuine belief' was appropriate to cover a broad scope of religious belief that may be held by individuals.¹¹⁷ HRLA, ACL and the Australian Association of Christian Schools described the Bill as a substantial improvement to the test in clause 5(1) of the Commonwealth Bill, which requires proof of a belief that a person of the same religion would reasonably consider as in accordance with the tenets, beliefs and teachings of that religion.¹¹⁸
- 2.73 ACL preferred the Bill's approach over the Commonwealth Bill in relation to 'genuine belief', describing it as 'simpler' and a superior subjective test compared to the reasonableness test. They also supported the subjective test on the basis that it avoids courts having to arbitrate in matters of religion and reflects the decision in the *Church of the New Faith* case.¹¹⁹ The Australian Association of Christian Schools shared this view and described the subjective test as 'fairer'.¹²⁰
- 2.74 Some stakeholders who were supportive of the Bill, including the Australian National Imams Council (ANIC) and the Public Affairs Commission of the Anglican Church of Australia, generally expressed some concern with the subjective test, and considered that the Bill should ensure that only genuine religions and religious convictions are protected, rather than the possibility of protecting any offshoot or splinter convictions held by a small minority within the religion.¹²¹
- 2.75 Conversely, several stakeholders, including ADNSW, Community Legal Centres NSW and NSWCCCL, considered the definition of 'genuinely believes' too broad and subjective and therefore difficult to disprove, thereby posing interpretative issues for decision makers.¹²²

¹¹⁶ Second exposure draft, Religious Discrimination Bill 2019 (Cth), [Explanatory Notes](#), p6, viewed 22 March 2021

¹¹⁷ Submission 61, The Church of Jesus Christ Latter Day Saints, p34; Submission 72, Catholic Bishops of NSW and AMEC, p10; Submission 78, Australian Christian Lobby, p4; Submission 80, Human Rights Law Alliance, p5; Submission 111; Australian Association of Christian Schools, p3; Submission 120, Anglican Church Diocese of Sydney, p14; Submission 126, Freedom for Faith, p3

¹¹⁸ Submission 80, Human Rights Law Alliance, p5; Submission 78, Australian Christian Lobby, p4; Submission 111, Australian Association of Christian Schools, p3

¹¹⁹ Submission 78, Australian Christian Lobby, p4

¹²⁰ Submission 111, Australian Association of Christian Schools, p3

¹²¹ Submission 65, Australian National Imams Council, p11; Submission 39, Public Affairs Commission of the Anglican Church of Australia, pp2–3

¹²² Submission 55, Anti-Discrimination NSW, pp6-7; Submission 50, Community Legal Centres NSW, p4; Submission 122, New South Wales Council for Civil Liberties, p11

- 2.76 ADLEG and PIAC thought that the Bill's interpretation of the *Church of the New Faith case* did not reflect the full decision in that case.¹²³ The Law Society of New South Wales noted that in that case, the High Court considered the criteria for a 'religion', rather than a religious belief. The Law Society also noted that High Court Judges Mason ACJ and Brennan J considered that the right to freedom of religion should not permit any conduct that would breach ordinary laws.¹²⁴
- 2.77 Others expressed the view that the Bill's 'genuine belief' test was inconsistent with anti-discrimination legislation in other state and territory jurisdictions, including Queensland, Victoria and the Australian Capital Territory.¹²⁵

Determining religious discrimination

- 2.78 Section 22L provides for what constitutes discrimination on the ground of religious beliefs or religious activities. As set out in the Explanatory Notes to the Bill, the Bill seeks to replicate the language appearing in other heads of discrimination under the Act as to how unlawful discrimination is determined.¹²⁶
- 2.79 The Presbyterian Church of Australia in the State of NSW supported the description of religious discrimination because it clarified that discrimination against a person or organisation may be the result of receiving less favourable treatment, or being unable to comply with a requirement, because of their religious beliefs.¹²⁷
- 2.80 A number of stakeholders supported the provision as it applied similar wording to existing provision within the Act as to what constitutes unlawful discrimination under other protected attributed.
- 2.81 The LMA and Australian Muslim Advocacy Network (AMAN) noted their support for section 22L as it addresses an important gap in anti-discrimination protection to include religion and is consistent with the existing provisions under the Act.¹²⁸
- 2.82 PIAC noted that section 22L provided a sufficient definition of indirect and direct discrimination in conjunction with the established reasonableness test under the Act:

The definitions of both direct and indirect discrimination on the basis of religious activity in proposed section 22L provide appropriate protection against unreasonable discrimination on the basis of religious dress, including in the workplace.¹²⁹

- 2.83 ADLEG acknowledged that section 22L mirrored the existing structure of the Act to set out what constitutes discrimination and included a reasonableness test in determining this aspect. However ADLEG noted that other provisions within the

¹²³ Submission 34, Australian Discrimination Law Experts Group, p7; Submission 56, Public Interest Advocacy Centre, p5

¹²⁴ Answers to questions on notice, [The Law Society of New South Wales](#), 20 November 2020, p2, viewed 22 March 2021

¹²⁵ Submission 56, Public Interest Advocacy Centre, p5; Submission 50, Community Legal Centres NSW, p4

¹²⁶ Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020, [Explanatory Note](#), p2, viewed 22 March 2021

¹²⁷ Submission 130, The Presbyterian Church of Australia in the State of NSW, p4

¹²⁸ Submission 89, Australian Muslim Advocacy Network, p3; Submission 63, Lebanese Muslim Association, p6

¹²⁹ Submission 56, Public Interest Advocacy Centre, p11

Bill may conflict with the reasonableness test in section 22L, particularly the new definition of protected activity in sections 22N, 22S and 22Q, that define discrimination in the absence of a reasonableness test. Protected activity provisions are discussed in more detail later in Chapter 2.

Relevant provisions

22K Definitions

(1) In this Part—

religious activities includes engaging in religious activity, including an activity motivated by a religious belief, but does not include any activity that would constitute an offence punishable by imprisonment under the law of New South Wales or the Commonwealth.

religious beliefs includes the following—

- (a) having a religious conviction, belief, opinion or affiliation,
- (b) not having any religious conviction, belief, opinion or affiliation.

genuinely believes in relation to a person means the person's holding of the religious belief is sincere and is not fictitious, capricious or an artifice.

22KA Determining when a belief is held

For the purposes of this Act, a person holds a religious belief (inclusive of the person's beliefs as to the actions, refusals, omissions or expressions that are motivated or required by, conflict with, accord or are consistent with, that belief) if the person genuinely believes the belief.

22KB Religious belief or activity includes past, future and presumed religious belief or activity

(1) A reference in this part to a person's religious belief is a reference to a religious belief:

- (a) that a person holds, or
- (b) that a person is thought to hold (whether or not the person in fact holds the religious belief), or
- (c) that a person held in the past, or is thought to have held in the past (whether or not the person in fact held the religious belief) or
- (d) that a person will hold in the future or that it is thought a person will hold in the future (whether or not the person in fact will hold the religious belief).

(2) A reference in this Part to a person's religious activity is a reference to a religious activity:

- (a) that a person engages in, does not engage in or refuses to engage in, or
- (b) that a person is thought to engage in, thought not to engage in, or refuses to engage in (whether or not the person in fact engages in the religious activity), or
- (c) that a person engaged in in the past, or is thought to have engaged in the past or did not engage in or refused to engage in in the past, or it is thought to have not engaged in or to have refused to engage in in the past (whether

or not the person in fact engaged in the religious activity), or
 (d) that a person will engage in in the future, or that it is thought a person will engage in in the future, or will not engage in or refuse to engage in in the future, or it is thought a person will not engage in or refuse to engage in in the future (whether or not the person in fact will engage in the religious activity).

22L What constitutes discrimination on the ground of religious beliefs or religious activities

(1) A person (*the perpetrator*) discriminates against another person (*the aggrieved person*) on the ground of religious beliefs if the perpetrator—

(a) on the ground of the aggrieved person’s religious beliefs or the religious beliefs of a relative or associate of the aggrieved person, treats the aggrieved person less favourably than in the same circumstances, or in circumstances that are not materially different, the perpetrator treats or would treat a person—

- (i) with different religious beliefs, or
- (ii) who has such a relative or associate with different religious beliefs, or

(b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who—

- (i) do not have the same religious beliefs, or
- (ii) have such a relative or associate who does not have the same religious beliefs,

comply or are able to comply, being a requirement or condition that is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.

(2) A person (*the perpetrator*) discriminates against another person (*the aggrieved person*) on the ground of religious activities if the perpetrator—

(a) on the ground of the aggrieved person’s religious activities or the religious activities of a relative or associate of the aggrieved person, treats the aggrieved person less favourably than in the same circumstances, or in circumstances that are not materially different, the perpetrator treats or would treat a person who—

- (i) engages in different religious activities, or
- (ii) does not engage in, or refuses to engage in, religious activities, or
- (iii) has such a relative or associate who engages in different religious activities or who does not engage in, or refuses to engage in, religious activities, or

(b) requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who—

- (i) do not engage in the same religious activities, or
- (ii) do not engage in religious activities, or refuse to engage in, religious activities, or

(iii) have such a relative or associate who does not engage in, or refuses to engage in, religious activities,

comply or are able to comply, being a requirement or condition that is not reasonable having regard to the circumstances of the case and with which the aggrieved person does not or is not able to comply.

(3) For the purposes of this section, something is done on the ground of a person's religious beliefs or religious activities if it is done on the ground of—

- (a) the person's religious beliefs or religious activities, or
- (b) a characteristic that appertains generally to persons with those religious beliefs or who engage in those religious activities, or
- (c) a characteristic that is generally imputed to persons with those religious beliefs or who engage in those religious activities.

Committee comment

2.84 The Committee recommends the legislative approach in this Relevant Provision as suitable for a Government Bill with the following amendment:

In section 22K (Definitions), amend the definition of Religious Activities to read: 'Includes engaging in lawful religious activity, motivated by a religious belief'.

3. Religious ethos organisations (Sections 22K and 22M)

Summary

- 2.85 This section addresses the Bill's definition of a religious ethos organisation (REO) (section 22K) and the circumstances in which a REO is taken not to discriminate against others when acting in accordance with the tenets and beliefs of the religion upon which the REO is founded (section 22M).
- 2.86 The key issues arising from submissions related to the scope of the definition of a REO, determining the beliefs of a REO, and the inclusion of organisations in anti-discrimination law.
- 2.87 The Explanatory Note provides that section 22M is intended to be an exception, rather than an exemption, and notes that "when a religious institution acts in accordance with its beliefs, this is not discrimination".¹³⁰ It also states that the provision aligns NSW law with international practice, particularly General Comment 18 of the United Nations Human Rights Committee which recognises that "not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate".¹³¹

Committee comment

2.88 The Committee notes that the Bill's provisions establish 'religious ethos organisations' (REOs), which are organisations conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion.

¹³⁰ Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020, [Explanatory Note](#), p3, viewed 22 March 2021

¹³¹ Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020, [Explanatory Note](#), p3, viewed 22 March 2021

- 2.89 The Committee acknowledges the diversity of views on this issue, particularly regarding the ability for a REO to hold beliefs, and the exceptions afforded to REOs from the religious discrimination provisions in the Bill.
- 2.90 The Committee finds that there is a need to protect not-for-profit religious organisations from discrimination on the grounds of religious beliefs or activities by engaging in certain conduct because of their religious doctrines, tenets, beliefs or teachings.
- 2.91 The Committee notes that stakeholders expressed concern that the definition of REO may be problematic where such beliefs are capable of developing over time to reflect contemporary circumstances. The Committee recommends that the Government consider these concerns when drafting its Bill.
- 2.92 The Committee also considers a distinction should be made between organisations that are not-for-profit and those that are motivated by profit and recommends that the Government Bill should only give protection to not-for-profit religious organisations.
- 2.93 The Committee also acknowledges stakeholder concerns that organisations that are not religious in nature, but operate to meet the needs of a specific ethnic and religious community, may require protection from religious discrimination. Such organisations include welfare societies, sports clubs or youth groups that operate for the Jewish or Muslim community. Therefore organisations that operate for the furtherance of a community's religious doctrines, tenets, beliefs or teachings should be extended protection in the Government Bill.
- 2.94 The Committee also recognises certain stakeholder concerns about whether protections for religious organisations would apply throughout the Bill, such as in relation to employment, education or qualifying bodies. The Committee considers that for the avoidance of doubt, the Government Bill should clarify how any exemptions to religious bodies relate to other relevant protection provisions.

Stakeholders' views

Definition of a religious ethos organisation

- 2.95 Stakeholders that supported these provisions, including Catholic Bishops of NSW and AMEC and Freedom for Faith, considered it appropriate to extend protections, exemptions and exceptions to organisations that operate in accordance with religious doctrines, tenants, beliefs or teachings.¹³²
- 2.96 Freedom for Faith considered that the Bill's protection of REOs was better than the protection offered under the Commonwealth Bills, which excluded certain religious bodies that engage mainly in commercial activities.¹³³ The Australian Federation of Islamic Councils and the Australian National Imams Council suggested that this protection should extend to commercial activities that are

¹³² Submission 72, Catholic Bishops of NSW and AMEC, p9; Submission 126, Freedom for Faith, p3

¹³³ Submission 126, Freedom for Faith, p3

carried out in accordance with religious teachings, such as Halal-certified businesses.¹³⁴

- 2.97 Other stakeholders, while also supportive of the Bill generally, expressed concerns that the definition of REOs lacked a test to determine whether an organisation is conducted in accordance with doctrines, tenets, beliefs or teachings of a particular religion. The NSW Jewish Board of Deputies and the Institute for Public Affairs suggested that this could be remedied by requiring a formal registration process for REOs that meet objective criteria, such as with NSW Fair Trading or the Australian Charities and Not-for-profits Commission (ACNC).¹³⁵
- 2.98 Christian Schools Australia Limited suggested that REO status could be determined by reference to an organisation's adoption of applicable doctrines, tenets and beliefs in its governing documents, organising principles, statement of belief and/or statement of values.¹³⁶ Alternatively, it was suggested by the Public Affairs Commission of the Anglican Church of Australia and PIAC that the Bill could be amended to limit the application of REO status to bodies or organisations 'established for religious purposes',¹³⁷ or bodies established to propagate religion.¹³⁸
- 2.99 Supporters of the Bill considered that the extension of anti-discrimination protection to religious organisations was appropriate to capture the communal expression of religious faith.
- 2.100 Archbishop Anthony Fisher of the Catholic Archdiocese of Sydney, stated:
- That is quite central to what it is to believe and express your belief—to be able to get together with others and look after refugees, the poor, the sick or the elderly, as most faiths understand it. For those sorts of reasons it just does not work to say we will protect it just for individuals but not institutions, because in fact the way that individuals engage in and manifest their faith is in a corporate, communal and institutional way.¹³⁹
- 2.101 The Committee also received evidence from stakeholders who opposed the definition of REOs on the basis that the definition was too broad and would make it difficult to determine what organisations fell in this category.
- 2.102 ADNSW, for example, considered that the definition of REOs and religious beliefs was too broad. They considered it would be difficult to apply the definition in situations where people from the same religion may not agree with differences of opinion and interpretation of religious texts.¹⁴⁰

¹³⁴ Submission 85, Australian Federation of Islamic Councils, p7; Submission 65, Australian National Imams Council, p11

¹³⁵ Submission 23, NSW Jewish Board of Deputies, pp7-8; Submission 119, Institute of Public Affairs, p5

¹³⁶ Submission 117, Christian Schools Australia Limited, p3

¹³⁷ Submission 39, Public Affairs Commission of the Anglican Church of Australia, p6; Submission 56, Public Interest Advocacy Centre, p12

¹³⁸ Submission 56, Public Interest Advocacy Centre, p12

¹³⁹ Archbishop Anthony Fisher, Archbishop of Sydney, Catholic Archdiocese of Sydney, Transcript of evidence, 6 November 2020, p10

¹⁴⁰ Submission 55, Anti-Discrimination NSW, p7

- 2.103 ADNSW was concerned that the Bill did not contain equivalent protection for secular organisations, and that the lack of definition of religion may broaden the REO category to include sects or cults not generally accepted as religions by the community.¹⁴¹ ADNSW suggested that the broad definition of a REO could mean that organisations such as political parties, government organisations, trade unions and qualifying bodies could potentially identify as REOs.¹⁴²
- 2.104 A number of stakeholders, including the ADLEG, PIAC, the NSW Society of Labor Lawyers, NSWCCCL, NSW Bar Association, the Law Society of NSW, Rape and Domestic Violence Services Australia and Equality Australia, expressed the view that section 56 of the Act already provided sufficient protection to religious bodies.¹⁴³ Section 56 provides that nothing in the Act affects the appointment or training of religious ministers or members, or "any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion".¹⁴⁴
- 2.105 Mr Mark Sneddon of the Institute for Civil Society contended that section 22M of the Bill is a broader category than the existing provisions relating to religious bodies under section 56 of the Act. He noted that section 22M provides that REOs "do not engage in discrimination when they do certain things which are in conformity with their doctrines or necessary to protect the susceptibilities of individuals".¹⁴⁵
- 2.106 Kingsford Legal Centre UNSW considered that the broad definition of REO would increase the complexity of discrimination law by introducing a new legal test that differs from the existing test for religious bodies under section 56 of the Act.¹⁴⁶

Extending anti-discrimination law protection to organisations and corporations

- 2.107 Stakeholders also raised concerns that the Bill sought to extend the human right of freedom of religion to organisations and corporations. ADNSW considered that it was unusual to provide that an organisation can hold beliefs, and not provide for how the beliefs of an organisation can be ascertained.¹⁴⁷
- 2.108 Stakeholders, including PIAC, Community Legal Centres NSW and the Council of Australian Postgraduate Associations (CAPA), queried how it could be determined

¹⁴¹ Submission 55, Anti-Discrimination NSW, p7

¹⁴² Submission 55, Anti-Discrimination NSW, p8

¹⁴³ Submission 34, Australian Discrimination Law Experts Group, p19; Submission 56, Public Interest Advocacy Centre, p13; Submission 87, NSW Society of Labor Lawyers, p4; Submission 122, New South Wales Council for Civil Liberties, p15; Submission 143, NSW Bar Association, p9; Submission 49, Rape and Domestic Violence Services Australia, p6; Submission 68, Law Society of NSW, p5; Submission 86, NSW Young Lawyers, p5; Submission 51, Equality Australia, p11

¹⁴⁴ *Anti-Discrimination Act 1977 (NSW)*, section 56 (Religious bodies)

¹⁴⁵ Mr Mark Sneddon, Executive Director, Institute for Civil Society, Transcript of evidence, 23 October 2020, p60

¹⁴⁶ Submission 52, Kingsford Legal Centre UNSW Australia, p6

¹⁴⁷ Submission 55, Anti-Discrimination NSW, p9

that an organisation or corporation 'genuinely believed' that its conduct was in accordance with its religious teachings.¹⁴⁸

- 2.109 ALHR considered that the term 'genuinely believes' introduced a subjective element to the proposed exception that is significantly easier to satisfy than existing exceptions in the Act.¹⁴⁹
- 2.110 DCJ submitted that the REO provisions were unique given that the existing anti-discrimination framework focusses on individuals rather than organisations:

This bill is a little unusual in the way it treats the target of discrimination, in that it calls out organisations specifically. Generally speaking, anti-discrimination provisions, in the rest of the Act for example, do not do that. It is not the case that organisations in and of themselves might not sometimes be the target of a discriminatory action, but the concept of discrimination on the grounds listed in the Act are concepts that are grounded in individuals as humans.¹⁵⁰

Circumstances where religious ethos organisations are taken not to discriminate

- 2.111 Some stakeholders commented on the effect of providing organisations with protection under anti-discrimination law having it then extended to the Bill's provisions regarding the provision of goods and services, accommodation, and registered clubs.
- 2.112 Those in favour of the proposed protection, including Professor Michael Quinlan and Professor A Keith Thompson, FamilyVoice Australia, the Seventh-day Adventist Church of Australia, ACL, the Presbyterian Church of Australia, Baptist Association of NSW and ACT and The Canberra Declaration, considered that the REO definition, and circumstances where a REO is taken not to discriminate, was adequate to allow an organisation to act in accordance with its beliefs.¹⁵¹ Many stakeholders, including The Church of Jesus Christ Latter Day Saints, Catholic Bishops of NSW and AMEC and the Institute for Civil Society also considered that the provisions were consistent with principles of international law regarding freedom of religion.¹⁵²
- 2.113 FamilyVoice considered that the provision was necessary to allow religious institutions to "pursue their religious purposes by preferencing those who share the same religion in employment and in certain other contexts".¹⁵³
- 2.114 Dr Steve Bartlett of the Baptist Association of NSW and Act considered that section 22M may be seen as an overarching provision. He noted that section 22M "provides the flexibility without giving a sense that this is allowing preferential

¹⁴⁸ Submission 56, Public Interest Advocacy Centre, p13; Submission 50, Community Legal Centres NSW, p3; Submission 138, Council of Australian Postgraduate Associations, p6

¹⁴⁹ Submission 54, Australian Lawyers for Human Rights, p15

¹⁵⁰ Mr Paul McKnight, Acting Deputy Secretary, Law Reform and Legal Services, Department of Communities and Justice, Transcript of evidence, 16 November 2020, p10

¹⁵¹ Submission 2, Professor Michael Quinlan and Professor A Keith Thompson, p11; Submission 10, FamilyVoice Australia (NSW), p6; Submission 70, Seventh-day Adventist Church in Australia, p4; Submission 78, The Australian Christian Lobby, p5; Submission 95, The Canberra Declaration, p15; Submission 130, The Presbyterian Church of Australia, p5; Submission 42, Baptist Association of NSW and ACT, p2

¹⁵² Submission 61, The Church of Jesus Christ of Latter-day Saints, p8; Submission 72, Catholic Bishops of NSW and AMEC, p11; Submission 88, Institute for Civil Society, p4 – 5

¹⁵³ Submission 10, FamilyVoice Australia (NSW), p5

treatment in a way that is unhelpful or not in accordance with the doctrines of love and grace, which are key to religious faiths".¹⁵⁴

- 2.115 The Committee received submissions from a number of schools and educational institutions, including Catholic Schools NSW, the Australian Association of Schools, St Andrews Cathedral Schools, the Association of Independent Schools of NSW and the Australian Christian Higher Education Alliance, that supported the REO provisions because it would provide protection for them to act in accordance with their religious beliefs, tenets, doctrines and teachings, which may include giving preference to students or staff who share these religious beliefs.¹⁵⁵
- 2.116 A number of submissions and evidence from witnesses regarding faith-based schools and education institutions expressed the importance and significance of the current 'exemption provisions' applicable to them under the *Anti-Discrimination Act 1977* (NSW). Furthermore, they emphasised the importance and significance to them of the ongoing application of such types of 'exemption provisions' into the future.
- 2.117 Other stakeholders, including Inner West Council, Intersex Human Rights Australia (IHRA), NSW Young Lawyers, Dr Bruce Baer Arnold, Dr Wendy Bonython and Dr Richard Matthews, Kingsford Legal Centre UNSW, NSWCCCL and the NSW Bar Association, however, considered that the Bill did not strike the right balance, enabling organisations with REO status to discriminate on the grounds of religion.¹⁵⁶
- 2.118 Community Legal Centres NSW considered that the definition of a REO under section 22K, combined with the wide scope of exceptions provided in section 22M, would enable a broad range of organisations to discriminate against people of different faiths or no faith without consequence.¹⁵⁷
- 2.119 A number of stakeholders, including IHRA, Rainbow Families NSW and WEL, also raised concerns that the REO provisions could permit religious institutions to discriminate against particular groups in the community, such as LGBTIQ+ communities, people with disability and women.¹⁵⁸
- 2.120 Dr Justin Koonin, President of ACON, advised his concern that the legislation would create barriers between religious organisations and LGBTIQ+ communities:

...there is a high probability that the legislation as phrased will increase barriers and antipathy between religious organisations and, in this case, LGBTQ communities at a

¹⁵⁴ Reverend Dr Steve Bartlett, Director of Ministries, Baptist Association NSW and ACT, Transcript of evidence, 6 November 2020, p41

¹⁵⁵ Submission 81, Catholic Schools NSW, pp10-14; Submission 111, Australian Association of Christian Schools, p3-4; Submission 115, St Andrews Cathedral School, p2; Submission 26, The Association of Independent Schools of NSW, p1; Submission 32, Australian Christian Higher Education Alliance, p8

¹⁵⁶ Submission 1, Dr Bruce Baer Arnold, Dr Wendy Bonython and Dr Richard Matthews, p4; Submission 33, Inner West Council, p2; Submission 46, Intersex Human Rights Australia, p7; Submission 52, Kingsford Legal Centre UNSW Australia, p7; Submission 86, NSW Young Lawyers, p10; Submission 122, NSW Council for Civil Liberties, p15; Submission 143, NSW Bar Association, p5

¹⁵⁷ Submission 50, Community Legal Centres NSW, p3

¹⁵⁸ Submission 46, Intersex Human Rights Australia, p6; Submission 4; Rainbow Families NSW, p8; Submission 123, Women's Electoral Lobby, p5

time when we have worked really hard to build relationships. I think that we are all trying to protect people on the basis of religion and to find a balance between them and other marginalised groups, but we need to act very carefully if we do not want to create division at the very moment when we are building bridges.¹⁵⁹

- 2.121 Concern was also raised by Intersex Human Rights Australia, NSW Gay and Lesbian Rights Lobby, Amnesty International and Dying with Dignity NSW about the ability of REOs to deny services to individuals where a REO is providing a public service, and in some circumstances, may have received public funding to provide that service.¹⁶⁰
- 2.122 ADLEG considered that section 22M would capture many organisations set up for commercial purposes, as well as health and welfare related services. ADLEG considered that these types of organisations should not be afforded exceptions which permit what is otherwise unlawful discrimination.¹⁶¹
- 2.123 NSW Young Lawyers stated their concern that section 22M could result in REOs being able to discriminate against certain groups, particularly by being able to restrict their healthcare services.¹⁶²
- 2.124 In light of these criticisms, the Institute of Civil Society acknowledged that section 22M may need some clarification regarding REOs that provide services to the general public, rather than just the religious community. They considered that the provision should ensure that a REO (other than educational service providers) may not discriminate among recipients of those services on the basis of the recipient's religious beliefs or activities or lack thereof.¹⁶³
- 2.125 The Committee also received mixed views from the Australian Christian Alliance, the Institute of Public Affairs and the NSWCCCL on which party should bear the burden of proof to establish that an organisation is a REO.¹⁶⁴

Relevant provision

22K Definitions

religious ethos organisation means—

- (a) a private educational authority that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion, or
- (b) a charity registered with the Australian Charities and Not-for-profits Commission under the Australian Charities and Not-for-profits Commission Act 2012 of the Commonwealth that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion, or

¹⁵⁹ Dr Justin Koonin, President, ACON, Transcript of evidence, 5 November 2020, p54

¹⁶⁰ Submission 46, Intersex Human Rights Australia, p6; Submission 64, NSW Gay and Lesbian Rights Lobby, p8; Submission 71, Amnesty International Australia, p18; Submission 31, Dying with Dignity NSW, p3

¹⁶¹ Submission, 34, Australian Discrimination Law Experts Group, p21

¹⁶² Submission 86, NSW Young Lawyers, p9

¹⁶³ Submission 88, Institute for Civil Society, p5;

¹⁶⁴ Submission 5, Australian Christian Alliance, p3; Submission 119, Institute of Public Affairs, p 2; Submission 122, NSW Council for Civil Liberties, p15

(c) any other body that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion.

22M Religious ethos organisations taken not to discriminate in certain circumstances

(1) For the purposes of this Part, 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.

(2) Without limiting subsection (1), conduct referred to in that subsection includes giving preference to persons of the same religion as the religion of the religious ethos organisation.

Nothing in this section, or any provision of this Act that refers to a religious ethos organisation, affects the operation of section 56 (Religious bodies).

Committee comment

- 2.126 The Committee recommends the legislative approach in this Relevant Provision as suitable for a Government Bill with the following five amendments:
- a) In section 22K (Definitions), for the definition of Religious Ethos Organisation, in part (c), line 1, insert 'not-for-profit' between 'other' and 'body', so that it reads 'any other not-for-profit body that is conducted...'
 - b) To introduce the amendment in (a) above, a definition of 'not-for-profit body' is required, as follows: 'An organisation whose assets and income are applied solely to further its objects and where no portion is distributed directly or indirectly to the members of the organisation (including in the event of the dissolution of the organisation), except as genuine compensation for services rendered or expenses incurred on behalf of the organisation'.
 - c) In section 22K, definition of 'religious ethos organisation', insert 'or' at the end of (c) and add the following:
 - (d) a not-for-profit body that provides persons of a particular religious association, affiliation or belief with goods or services for the purpose of promoting their welfare in order to meet the special needs of such persons, or to overcome prejudice and disadvantage arising from such religious association, affiliation or belief.
 - d) In section 22K the definition of Religious Ethos Organisation be amended so that where the words 'is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion' occur these are replaced with 'is

conducted in accordance with, or for the furtherance of, the doctrines, tenets, beliefs or teachings of a particular religion’.

e) In section 22M (page 6 of the Bill), add subsection (4) as follows: ‘For the avoidance of doubt, this section applies despite anything else in this Part.’ This is a technical change (raised in several submissions) to avoid any doubt as to whether section 22M overrides REO obligations as employers elsewhere in the Bill: sections 22N, 22S (Qualifying bodies) and 22V (Education).

4. Protected activity provisions (Section 22N, 22S and 22V)

Summary

- 2.127 This section discusses the proposed insertion of protected activity provisions in the Bill in relation to employment (section 22N), qualifying bodies (section 22S), and education (section 22V).
- 2.128 In support of these provisions stakeholders argued that they would prevent employers, qualifying bodies and educational authorities from limiting the expression of a person's religious beliefs or activities in their private lives. Many considered that this protection was necessary and appropriate, and that the definition of protected activity was consistent with other parts of the Act.
- 2.129 Others cited concerns the provisions would prohibit employers, qualifying bodies and educational authorities from upholding reasonable codes of conduct to address harmful behaviour. Concerns were also raised about the potential disproportionate impact of these provisions on certain groups in workplace and health service settings, including women and the LGBTIQ+ community.

Committee comment

- 2.130 The Committee notes that the application of the protected activity provisions differ from the existing legal framework under the Act by prohibiting restrictions on or punishment of an employee for engaging in religious activities outside of work hours and the work place. This protection extends to religious activities that may result in a boycott or secondary boycott of the employer, or withdrawal of sponsorship or other financial or corporate support. It applies to employment, qualifying bodies and education authorities.
- 2.131 The Committee believes that workers should be free to express their religious beliefs and engage in religious activities away from the workplace without adverse treatment by their employer. However, the provisions of the Bill as drafted create complexity in their application to workplaces. The exemptions in the employment provision of 22N(3)-(5) are narrow and should be expanded to cover direct criticism and attack on the employer and staff of the employer. The threshold of ‘direct and material financial detriment’ to the employer should also be reviewed.
- 2.132 Similarly, the Committee considers that direct attacks on staff should not be a protected activity in relation to section 22S (qualifying bodies) and 22V (education). The exemptions of protected activity to qualifying bodies and education bodies are copied from the employment provisions at Section 22N. The Committee is concerned that these may not be appropriate for a qualifying body

or an education body and that the Government bill should review these exemptions.

- 2.133 The Committee also heard evidence from stakeholders that considered it appropriate to distinguish between regular employees and individuals that are contracted to represent a particular brand ('brand ambassadors'). The Committee considered that the definition of protected activity should not extend to brand ambassadors since they are hired and remunerated primarily for the purpose of advancing an organisation's brand or image.

Stakeholder views

Discrimination against applicants and employees

- 2.134 Under the Bill's employment provisions at section 22N, a protected activity is defined as a religious activity that occurs at a time other than when the employee is performing work and at a place other than the employer's place of work and does not include any direct criticism of, or attack on, or does not cause any direct and material financial detriment to the employer.
- 2.135 Stakeholders who supported the protected activity provisions, including Catholic Women's League Australia – NSW, Mr Mark Sneddon of the Institute for Civil Society and Dr Michael Casey of the PM Glynn Institute, considered that the expression of religious beliefs and activities outside the workplace should be protected.¹⁶⁵
- 2.136 They also submitted that the rise of social media made it increasingly challenging for people of faith to express their religious beliefs in their personal life without fear of penalty from their employer.¹⁶⁶
- 2.137 The Baptist Association of NSW and ACT also noted the rise of social media and its challenges for people of faith.¹⁶⁷ Reverend Dr Steve Bartlett referred to instances where individuals who were board members of organisations that held a Christian ethos were required to step down from those positions because it was incompatible with their employment.¹⁶⁸ Given the pressure to act in conflict with their religious convictions, Dr Bartlett considered that there was a need for the protection of private expressions of religious beliefs.¹⁶⁹
- 2.138 The Australian Christian Lobby considered that the Bill's provisions would ensure that an employer could not dismiss or take other disciplinary action against an

¹⁶⁵ Submission 25, Catholic Women's League Australia – NSW Inc, p3; Mr Mark Sneddon, Executive Director, Institute for Civil Society, Transcript of evidence, 23 October 2020, p64; Submission 69, Dr Michael Casey, Director, PM Glynn Institute, Australian Catholic University, p5

¹⁶⁶ Submission 42, Baptist Association of NSW and ACT, p2; Reverend Dr Steve Bartlett, Director of Ministries, Baptist Association of NSW and ACT, Transcript of evidence, 6 November 2020, pp42-43; Submission 72, Catholic Bishops of NSW and AMEC, p11; Submission 78, Australian Christian Lobby, p5

¹⁶⁷ Submission 42, Baptist Association of NSW and ACT, p2

¹⁶⁸ Reverend Dr Steve Bartlett, Director of Ministries, Baptist Association of NSW and ACT, Transcript of evidence, 6 November 2020, pp42-43

¹⁶⁹ Submission 42, Baptist Association of NSW and ACT, p2

employee for a religious belief expressed on social media when it is not related to their work or the employer.¹⁷⁰

- 2.139 HRLA noted that the Bill will add a further standalone set of discrimination prohibitions to the Act for religious belief and activity, and that this approach is consistent with the approach taken in relation to other attributes. They added that religious freedom has unique characteristics that require particular consideration not applicable to other rights under the ICCPR.¹⁷¹
- 2.140 Others also considered that the Bill would provide better protection than the Commonwealth Bills. The Australian Christian Lobby (ACL) and FamilyVoice both submitted that the protected activity provisions were clearer and more efficient in providing protection for employees than the Commonwealth Bills.¹⁷² ACL strongly supported the Bill ensuring that "an employer or professional accreditation body could not dismiss, or take other disciplinary action against, an employee for a religious belief expressed on social media that is unrelated to their work".¹⁷³
- 2.141 The Australian Christian Alliance supported the provisions as ensuring respectful dialogue is not threatened or shutdown.¹⁷⁴ They also considered that the exclusion of secondary boycotts or loss of sponsorship from what constitutes financial detriment or harm could prevent a repetition of an 'Israel Folau' scenario.¹⁷⁵
- 2.142 Mr Christopher Brohier, Legal Counsel at the Australian Christian Lobby, noted that the protected activity provisions in section 22N(3)-(9) were appropriate and that an employer should not be able to dismiss an employee for an expression of religious belief outside work that does not directly impact the employer's business.¹⁷⁶
- 2.143 The Committee also received evidence from stakeholders who considered that the protected activity provisions were not consistent with the existing framework of the Act.
- 2.144 PIAC considered that the general discrimination provision at section 22L(1)(b) is sufficient to address situations of discrimination on the grounds of religion. PIAC also considered that the standard employment provisions contained in section 22N(1)-(2) were sufficient to address workplace discrimination on the basis of religious belief and activity, including hiring processes and decisions, the terms and conditions of employment, training and termination provisions.¹⁷⁷
- 2.145 ADNSW expressed concerns about the protected activity provisions in employment and noted that the Bill does not include any reasonableness test in its definition of protected activity, which may lead to a broad interpretation. As

¹⁷⁰ Submission 78, Australian Christian Lobby, p5

¹⁷¹ Submission 80, Human Rights Law Alliance, pp3-4

¹⁷² Submission 78, Australian Christian Lobby, p5; Submission 10, FamilyVoice Australia (NSW), p6

¹⁷³ Submission 78, Australian Christian Lobby, p5

¹⁷⁴ Submission 5, Australian Christian Alliance, p3

¹⁷⁵ See media reports: ABC News, David Mark, [Israel Folau to take Rugby Australia to Fair Work Commission over contract termination](#), 6 June 2019

¹⁷⁶ Mr Christopher Brohier, Legal Counsel, Australian Christian Lobby, Transcript of evidence, 23 October 2020, p64

¹⁷⁷ Submission 56, Public Interest Advocacy Centre, p9

- ADNSW's role includes providing information about rights and responsibilities under the Act, it considered that the provisions may cause practical difficulties when advising on the operation of the protected activity clauses in relation to employment, or in relation to discrimination by REOs.¹⁷⁸
- 2.146 Stakeholders, including Rainbow Families NSW, Inner West Council, Amnesty International Australia and the Australian Industry (Ai) Group, submitted that the wide definition of protected activity would encompass a range of potentially harmful activities and would be difficult to implement in practice.¹⁷⁹
- 2.147 Kingsford Legal Centre UNSW was concerned that the protected activity test under 22N was broadly defined and would limit an employer's ability to take appropriate action to protect diverse groups of staff from discriminatory or otherwise harmful conduct.¹⁸⁰
- 2.148 The LMA considered that provisions under section 22N strike a disproportionate balance in favour of freedom of speech at the expense of the need to maintain tolerance and diversity in workplaces. The LMA considered that the provisions could result in individuals and groups already subject to offensive and harmful statements, being placed in a position of further vulnerability. These groups included adherents of minority religions, people with disability and people who identify as LGBTIQ+.¹⁸¹
- 2.149 It was also submitted by ADLEG, Kingsford Legal Centre UNSW, ALHR, PIAC, Muslim Women Australia, Amnesty International Australia, NSW Young Lawyers, NSW Society of Labor Lawyers, Ai Group and NSWCCCL, that the protected activity provisions would work contrary to existing anti-discrimination legislation at the state and federal levels, as well as appearing to override normal work health and safety requirements.¹⁸²
- 2.150 The Australian Industry (Ai) Group considered that the protected activity provisions at section 22N(4) did not resolve the inevitable conflict that employers would face in managing obligations under work health and safety legislation, the *Fair Work Act 2009 (Cth)* and anti-discrimination legislation.¹⁸³
- 2.151 DCJ regarded section 22N as a complex provision saying it may impact on the ability of employers to uphold codes of conduct against an employee whose actions cause

¹⁷⁸ Submission 55, Anti-Discrimination NSW, p9, 12

¹⁷⁹ Submission 1, Dr Arnold and Dr Bonython and Dr Matthews, pp2, 7; Submission 4, Rainbow Families NSW, pp11-12; Submission 33, Inner West Council, p2; Submission 34, Australian Discrimination Law Experts Group, p11; Submission 54, Australian Lawyers for Human Rights, pp11-12; Submission 55, Anti-Discrimination NSW, p9; Submission 63, Lebanese Muslim Association, p7; Submission 71, Amnesty International Australia, pp19-20; Submission 109, Australian Industry Group, pp3-9.

¹⁸⁰ Submission 52, Kingsford Legal Centre UNSW Australia, p8

¹⁸¹ Submission 63, Lebanese Muslim Association, p7

¹⁸² Submission 34, Australian Discrimination Law Experts Group, p11-14; Submission 52, Kingsford Legal Centre UNSW Australia, p.8; Submission 54, Australian Lawyers for Human Rights, p11; Submission 56, Public Interest Advocacy Centre, p10; Submission 59, Muslim Women Australia, p8; Submission 79, Amnesty International Australia, p17; Submission 86, NSW Young Lawyers, pp3, 6; Submission 87, New South Wales Society of Labor Lawyers, pp3-4; Submission 109, Australian Industry Group, p8; Submission 122, New South Wales Council for Civil Liberties, pp12-13;

¹⁸³ Submission 109, Australian Industry Group, p3

harm and are motivated by religious belief. It gave the example of a person making racial slurs that constitute vilification but are consistent with tenets of their religion, which may fall within the definition of a protected activity. DCJ noted that this may create a situation where "a speaker might be liable for vilifying actions in a civil action under NSW Civil and Administrative Tribunal but also be protected from employment actions under the protected activity provisions in the Bill".¹⁸⁴

2.152 ADLEG noted that by singling out a protected activity, the Bill extended its scope outside the general prohibitions on discrimination.¹⁸⁵

2.153 PIAC considered the provisions would require employers to develop codes of conduct that regulate conduct outside the workplace differently, depending on whether a person is religious or not, and when they are acting in a manner that is motivated by their religious belief or not. It considered that this created a double standard for public statements outside the workplace made on the basis of religious belief, and on those made on the basis of a social, cultural, political, moral or scientific belief.¹⁸⁶

2.154 Stakeholders commented on the further limitation on exceptions to the protected activity provisions. Subsection 22N(5) provides that the following does not constitute direct and material financial detriment to an employer for the purposes of subsections 4(a) and 4(b):

- any boycott or secondary boycott of the employer by other persons because of the employee's protected activity, or the protected activity of their associate, or
- the withdrawal of sponsorship or other financial or corporate support for the employer because of the employee's protected activity, or the protected activity of their associate.

2.155 Stakeholders, including ADLEG, Muslim Women Australia and the Ai Group noted that this would severely limit the type of situations in which an employer could meet the requirements of the exception and take action against an employee.¹⁸⁷

2.156 The Coalition of Major Professional and Participation Sports (COMPPS), which includes the AFL, Cricket Australia, Football Federation, the NRL, Netball Australia, Rugby Australia and Tennis Australia, stated that these sections would have the effect of rendering a sporting organisation powerless to prevent or sanction its employees for engaging in conduct that contravenes their employment conditions notwithstanding such conduct is likely to or has caused damage to other persons and the sporting code itself. COMPPS noted that its members also rely on the profiles of popular professional athletes to generate interest in the sport from fans, sponsors and participants outside of work hours. COMPPS considered that actions

¹⁸⁴ Mr Paul McKnight, Acting Deputy Secretary, Law Reform and Legal Services, Department of Communities and Justice, Transcript of evidence, 16 November 2020, p17

¹⁸⁵ Submission 34, Australian Discrimination Law Experts Group, p11.

¹⁸⁶ Submission 56, Public Interest Advocacy Centre, p10

¹⁸⁷ Submission 34, Australian Discrimination Law Experts Group, p13; Submission 59, Muslim Women Australia, pp7-8; Submission 109, Australian Industry Group, p8

of athletes with such public profiles required the sport to respond to such conduct by declaring its own values through either endorsement or sanction.¹⁸⁸

- 2.157 COMPPS considered that the exclusion of boycotts, lost sponsorship, and financial corporate support from the category of 'financial detriment', effectively ignores the basis upon which a sport's viability is built.¹⁸⁹
- 2.158 COMPPS stated that section 22N went beyond what is necessary to protect discrimination on the grounds of religion and would limit sports clubs from creating an inclusive culture. COMPPS noted that codes of conduct are essential as a means of promoting and protecting sports' values and beliefs, and also form a part of COMPPS members' compliance with Federal Government policy, such as the minimum standards of the Sport Australia's Member Protection Policy (MPP) template 2016.¹⁹⁰
- 2.159 ADLEG asserted that while the protected activity provisions may be intended to prevent a repeat of an 'Israel Folau' scenario, such a situation is already captured by "the ordinary indirect discrimination provisions in the proposed sections 22L(1)(b) and (2)(b) without requiring additional special provisions".¹⁹¹
- 2.160 It was raised that brand ambassadors could be contracted out of the protected activity provisions and that this could be justified if the relevant contract sets out clearly and explicitly that it is "necessary for the effective performance of the duties for which the employee or contractor has been engaged".¹⁹²
- 2.161 The Committee also received evidence that the Bill's reference to what constitutes 'work' needed to be clarified, particularly where an employee may engage in actions outside of work hours or the workplace.¹⁹³
- 2.162 At the public hearing, Mr Ghassan Kassisieh, Legal Director, Equality Australia, stated that the protected activity provisions were arbitrary and lacked clarity as to when conduct may constitute a protected activity outside workhours i.e. if the harassing behaviour occurs at 5:01pm rather than 4:49pm. He considered that this departed from the usual test of reasonableness used in anti-discrimination laws and removed the consequences for harmful conduct:

We think there should be, in some cases, consequences for misconduct. The important thing about that is that conventional discrimination laws have a balancing around reasonableness. So you could take into account that greater latitude should be offered to employees when they want to express religious views or any view really outside of the workplace, but conventional discrimination already allows those considerations to be taken into account. It plays out in a range of situations. If a doctor promotes conversion therapy on the weekend, for example, the health body should be able to see whether or not they are fit to practise as a doctor or psychologist. If

¹⁸⁸ Submission 99, Coalition of Major Professional and Participation Sports, p4

¹⁸⁹ Submission 99, Coalition of Major Professional and Participation Sports, p5

¹⁹⁰ Submission 99, Coalition of Major Professional and Participation Sports, pp2-3

¹⁹¹ Submission 34, Anti-Discrimination Law Experts Group, p12

¹⁹² Submission 23, NSW Jewish Board of Deputies, p5

¹⁹³ Mr Jonathon Hunyor, Chief Executive Officer, Public Interest Advocacy Centre, Transcript of evidence, 23 October 2020, pp52-53

those views are held by them on the weekend, what is different about their ability to perform their role during the week?¹⁹⁴

Qualifying bodies

- 2.163 Similar concerns were expressed by stakeholders in relation to the protected activity provisions that applied to qualifying bodies under section 22S as those regarding employment under section 22N.
- 2.164 Stakeholders in support of the provision, including FamilyVoice Australia, the Presbyterian Church of Australia and Dr Michael Casey of the PM Glynn Institute, considered that it would protect qualified professionals from losing their accreditation for expressing their religious beliefs outside of their professional work.¹⁹⁵
- 2.165 The PM Glynn Institute of the Australian Catholic University considered the protected activity provisions some of the most important practical protections in the Bill. It noted that these provisions would protect professionals, such as healthcare workers, who may have a conscientious objection to performing certain medical procedures on religious or non-religious grounds:
- People should not stand in danger of losing their job or being excluded from their occupation because of their religious beliefs, or for activity they undertake to manifest those beliefs which falls within the bounds of the law and general reasonableness. They should not face restrictions or sanctions from their employer or the qualifying body for their occupation because of religious activities outside work, which do not entail criticism of their employer or qualifying body or cause them material financial detriment.
- These provisions would provide protection, for example, to healthcare workers or people seeking admission to healthcare professions who object on religious (or non-religious) grounds to providing or taking part in medical procedures such as abortion or assisted suicide. They would also protect people working in healthcare or related areas who take part in public debate or political activity or express views on social media outside work to promote their convictions about abortion or assisted suicide.¹⁹⁶
- 2.166 Ms Sheryl Sarkoezy and Reverend Dr John McClean representing the Presbyterian Church of Australia in the State of NSW similarly observed that section 22S would provide protection for Christian medical practitioners from losing their accreditation for their religious beliefs.¹⁹⁷
- 2.167 FamilyVoice pointed out that qualifying bodies are the gateway for many people of faith to be able to earn a living. Therefore it was important that these bodies be

¹⁹⁴ Mr Ghassan Kassisieh, Legal Director, Equality Australia, Transcript of evidence, 23 October 2020, p19

¹⁹⁵ Submission 10, FamilyVoice Australia (NSW), p7; Reverend Dr John McClean, Convener, Gospel, Society and Culture Committee, Presbyterian Church of Australia in the State of NSW, Transcript of evidence, 6 November 2020, p46; Ms Sheryl Sarkoezy, Researcher, Gospel, Society and Culture Committee, Presbyterian Church of Australia in the State of NSW, Transcript of evidence, 6 November 2020, p46; Submission 69, Dr Michael Casey, Director, PM Glynn Institute, Australian Catholic University, pp5, 8.

¹⁹⁶ Submission 69, Dr Michael Casey, Director, PM Glynn Institute, Australian Catholic University, pp5, 8

¹⁹⁷ Ms Sheryl Sarkoezy, Researcher, Gospel, Society and Culture Committee, Presbyterian Church of Australia in the State of NSW, and Reverend Dr John McClean, Convener, Society and Culture Committee, Presbyterian Church of Australia in the State of NSW, Transcript of evidence, 6 November 2020, p46

prohibited from discriminating on the grounds of religious belief. They supported the inclusion of section 22S to protect the private lives of professional people and restrict the ability of qualifying bodies to curtail private religious activity.¹⁹⁸

2.168 ADNSW cited concern about these provisions limiting the powers of qualifying bodies to regulate professions, such as health care professionals:

ADNSW is of the view that the Bill could limit the powers of qualifying bodies to regulate professions. For example, if a nurse or psychologist promoted beliefs that people with disabilities should not receive assistance. Other professional organisations such as the Bar Association or Law Society may also have limited options to sanction members if they promote religious beliefs such as, that women should not be in leadership positions and should submit to their husbands.¹⁹⁹

2.169 The Australian Medical Association (NSW) (AMA) noted that the Bill's provisions may conflict with professional standards and guidance set by the Australian Health Practitioner Regulation Agency (AHPRA). It referred to guidelines developed for registered health practitioners to help them meet their obligations when using social media. The AMA also considered that any legislation that addresses conscientious objection by doctors must reflect and uphold the ethical and professional standards of the medical profession where the doctor's primary duty is to support the health needs of patients. It suggested that inappropriate balancing of these aspects could have significant negative and harmful impacts on individuals' access to health care.²⁰⁰

2.170 Dying with Dignity NSW supported the right of medical practitioners to hold conscientious objections to certain procedures, such as voluntary assisted dying in jurisdictions where it is legal. However they strongly advocated for the obligation of the objecting practitioner or healthcare facility to refer the patient to an individual or service that is willing to participate in that procedure.²⁰¹

2.171 The Committee also heard from the Australian Association of Social Workers that the provisions were too subjective in nature and could risk promoting unethical practices that prioritise religion over the rights of others.²⁰² Examples offered included advocacy of therapy practices that claim to change a person's sexual orientation or gender identity, and the inability of qualifying bodies to investigate healthcare professionals who advocate discredited practices, or make faith-based statements about the health needs of marginalised groups, including women and people with disability.²⁰³

2.172 WEL held concerns that the provisions would create barriers to reproductive healthcare services where a health practitioner refused to provide services based on a conscientious objection founded on religious belief.²⁰⁴

¹⁹⁸ Submission 10, FamilyVoice Australia (NSW), p7

¹⁹⁹ Submission 55, Anti-Discrimination NSW, p10

²⁰⁰ Submission 139, Australian Medical Association NSW, pp3, 5

²⁰¹ Submission 31, Dying with Dignity NSW, p4

²⁰² Submission 62, Australian Association of Social Workers, pp6-7

²⁰³ Submission 64, NSW Gay and Lesbian Rights Lobby, p6; Submission 57, Family Planning NSW, pp2, 4-5

²⁰⁴ Submission 123, Women's Electoral Lobby (NSW), p5

2.173 However, the Committee also received evidence that the protected activity clauses would not result in barriers to accessing health services in NSW. Professor John Whitehall, National Chair of the Christian Medical and Dental Fellowship of Australia, disagreed with the AMA and RANZACOG. He highlighted that in practice, health care professionals working in religious hospitals are available to everybody, including the LGBTIQ+ community.²⁰⁵

Education

2.174 The protected activity provisions also apply to educational authorities under section 22V(3-5).

2.175 Supporting stakeholders, including Catholic Women’s League Australia, the Australian Christian Higher Education Alliance (ACHEA) and Dr Michael Casey of the PM Glynn Institute, thought the provisions would protect students from discrimination for expressing their religious beliefs, particularly at non-religious institutions.²⁰⁶

2.176 Several stakeholders, including FamilyVoice, the Australian Christian Alliance, Catholic Bishops of NSW and AMEC and the Anglican Church Diocese of Sydney made particular reference to a high profile United Kingdom case (the Felix Ngole case),²⁰⁷ where a student was prevented from completing their university degree for expressing their religious beliefs about traditional marriage and homosexuality on social media.²⁰⁸

2.177 Stakeholders opposed to the provisions, including Kingsford Legal Centre UNSW and ALHR, thought the definition of protected activity was not clear and would prevent educational authorities from enforcing codes of conduct or responding to harmful student behaviour.²⁰⁹

2.178 It was also considered by Rainbow Families NSW, ALHR, the Buddhist Council of NSW and Rainbohdi LGBTIQ+ Buddhist Community and the NSW Society of Labor Lawyers that the provisions did not realistically address the nature of a protected activity outside school hours and placed religious rights above other rights.²¹⁰ On this point, ADNSW noted their concern that schools would have little power to intervene or manage student behaviour that poses a risk towards other students, such as via social media, if it is made on the basis of a genuine religious belief.²¹¹

²⁰⁵ Professor John Whitehall, National Chair, Christian Medical and Dental Fellowship of Australia, Transcript of evidence, 5 November 2020, p36

²⁰⁶ Submission 25, Catholic Women’s League Australia – New South Wales Inc, p5; Submission 32, Australian Christian Higher Education Alliance, p8; Submission 69, Dr Michael Casey, Director, PM Glynn Institute, Australian Catholic University, p6

²⁰⁷ *R (Ngole) v University of Sheffield* [2019] EWCA Civ 1127

²⁰⁸ Submission 10, FamilyVoice Australia (NSW), p7; Submission 5, Australian Christian Alliance, p4; Submission 72, Catholic Bishops of NSW and AMEC, p13; Submission 120, Anglican Church Diocese of Sydney, p20;

²⁰⁹ Submission 52, Kingsford Legal Centre UNSW Australia p8; Submission 54, Australian Lawyers for Human Rights, pp13-14

²¹⁰ Submission 4, Rainbow Families NSW, pp9-10; Submission 54, Australian Lawyers for Human Rights, pp11-12; Submission 67, Buddhist Council of NSW and Rainbohdi LGBTIQ+ Buddhist Community, p4; Submission 87, NSW Society of Labor Lawyers, p4

²¹¹ Submission 55, Anti-Discrimination NSW, p10

- 2.179 It was noted by NSW Young Lawyers that the use of this phrase genuine religious belief could limit the ability of employers, qualifying bodies, and educational authorities from taking the necessary action in circumstances where religious activities could cause non-financial detriment to them.²¹²

Impact on minority groups

- 2.180 Some stakeholders, including Equal Voices, Amnesty International Australia, Fair Agenda and the Buddhist Council of NSW, considered that the protected activity provisions under sections 22N(3)-(5), 22S(3)-(5) and 22V(3)-(5) will negatively impact on groups of people already vulnerable to discrimination in public life.²¹³

- 2.181 Fair Agenda considered that proposed sections 22N(3)-(5), 22S(2)-(4) and 22V(3)-(5) may allow individuals to hurt others on the basis of their religion, and therefore make it difficult for government and non-government employers, educators and professional and licensing bodies to foster inclusive cultures. Fair Agenda stated:

We are concerned that the Bill would make it difficult for employers to protect their staff and clients, even if they try to put in place policies to ensure equality. We are extremely concerned that the Bill will open avenues for attacks on women, people with disabilities, LGBTIQ+ people and members of minority faith communities, and undermine protections for equal dignity.²¹⁴

- 2.182 The AMA expressed concern that the Bill's provisions would allow statements motivated by religious belief that amount to bullying or harassment that "offend, insult or intimidate groups such as women, LGBTIQ+ people or persons with disabilities".²¹⁵

- 2.183 Stakeholders, including NSW Young Lawyers, Equality Australia, Kingsford Legal Centre UNSW and PIAC noted concerns that the provisions would protect a wide range of harmful behaviour that, unless motivated by religious belief, would ordinarily constitute misconduct. On this basis, they recommended the removal of these provisions.²¹⁶

Drafting suggestions

- 2.184 The Committee received suggestions from stakeholders, including the Anglican Church Diocese of Sydney, the NSW Jewish Board of Deputies and Freedom for Faith, about the drafting of the protected activity provisions at sections 22N(3)-(5), 22S(3)-(5) and 22V(3)-(5). It was noted that each set of provisions that exempt REOs from the protected activity provisions were missing reference to a key subsection. For example, the REO exception in relation to protected activities in employment, contained at section 22N(9), only notes that subsections 22N(4) and (5) do not apply to REOs. However, this would exclude the definition of protected activity contained at section 22N(3). It was recommended that section 22N(9)

²¹² Submission 86, NSW Young Lawyers, p7

²¹³ Submission 36, Equal Voices, p3; Submission 71, Amnesty International Australia, pp19; Submission 92, Fair Agenda, p2; Submission 67, Buddhist Council of NSW and Rainbodhi LGBTQIA+ Buddhist Community, pp4-5

²¹⁴ Submission 92, Fair Agenda, p2

²¹⁵ Submission 139, Australian Medical Association, p4

²¹⁶ Submission 86, NSW Young Lawyers, p3; Submission 51, Equality Australia, p5; Submission 52, Kingsford Legal Centre UNSW Australia, p8; Submission 56, Public Interest Advocacy Centre, p11

should also refer to subsection 22N(3) to ensure it captures the entire protected activity provisions. Leaving this reference out could impact on how the provision is applied in practice.²¹⁷ This drafting issue was also raised by NSW Young Lawyers in relation to the comparable clauses at sections 22S(5) and 22V(6).²¹⁸

- 2.185 Catholic Schools NSW and the Association of Independent Schools of NSW also considered that section 22V(1)-(2) should be clarified to confirm that religious schools can preference enrolment of students of a particular religion.²¹⁹ Professor Michael Quinlan and Professor A Keith Thompson considered that REOs should be exempt from section 22V, rather than relying on the general REO exemption in section 22M. It was noted by Professor Michael Quinlan and Professor A Keith Thompson that section 22V, as currently drafted, may mean that some religious educational institutions may have to meet the separate tests in section 22M to enrol only students of a particular religion.²²⁰
- 2.186 It was also noted that section 22N only applies to a business with more than five full time employees. It was suggested that this be changed to businesses that employ up to five full time equivalent employees. This would protect businesses that rely on more than five employees working less than full time.²²¹

Relevant provisions—

22N Discrimination against applicants and employees

- (1) It is unlawful for an employer to discriminate against a person on the ground of religious beliefs or religious activities—
- (a) in the arrangements the employer makes for the purpose of determining who should be offered employment, or
 - (b) in determining who should be offered employment, or
 - (c) in the terms on which the employer offers employment.
- (2) It is unlawful for an employer to discriminate against an employee on the ground of religious beliefs or religious activities—
- (a) in the terms or conditions of employment which the employer affords the employee, or
 - (b) by denying the employee access, or limiting the employee's access, to opportunities for promotion, transfer or training, or to any other benefits associated with employment, or
 - (c) by dismissing the employee or subjecting the employee to any other detriment.
- (3) Without limiting subsection (1) and (2), it is unlawful for an employer to—
- (a) restrict, limit, prohibit or otherwise prevent an employee from engaging in a protected activity, or
 - (b) punish or sanction an employee:
 - (i) for engaging in a protected activity, or
 - (ii) because an associate of the employee engaged in a protected activity.
- (4) In subsection (3), **protected activity** means—

²¹⁷ Submission 120, Anglican Church Diocese Sydney, p19; Submission 23, NSW Jewish Board of Deputies, p5; Submission 126, Freedom for Faith, p5; Mr Peter Wertheim, Co-Chief Executive Officer of the Executive Council of Australian Jewry, Transcript of evidence, 23 October 2020, p31

²¹⁸ Submission 86, NSW Young Lawyers, p11

²¹⁹ Submission 81, Catholic Schools NSW, p12; Submission 26, The Association of Independent Schools of NSW, p1

²²⁰ Submission 2, Professor Michael Quinlan and Professor A Keith Thompson, p12;

²²¹ Submission 104, Dr Greg Walsh, p1

- (a) a religious activity performed by the employee that:
 - (i) occurs at a time other than when the employee is performing work and at a place other than the employer's place of work, and
 - (ii) does not include any direct criticism of, or attack on, or does not cause any direct and material financial detriment to, the employer.
 - (b) a religious activity performed by an associate of the employee that does not include any direct criticism of, or attack on, or does not cause any direct and material financial detriment to, the employer.
- (5) For the avoidance of doubt, the following do not constitute direct and material financial detriment to an employer for the purposes of subsection 4(a) and 4(b)—
- (a) any boycott or secondary boycott of the employer by other persons because of the employee's protected activity, or the protected activity of their associate, or
 - (b) the withdrawal of sponsorship or other financial or corporate support for the employer because of the employee's protected activity, or the protected activity of their associate.
- (6) It is unlawful for an employer to discriminate against a person on the ground of religious beliefs or religious activities by refusing the employee permission to wear any religious symbol or any religious clothing during work hours, but only if—
- (a) the symbol or item of clothing is of a kind recognised as necessary or desirable by persons with the same religious beliefs or who engage in the same religious activities as that of the employee, and
 - (b) wearing the symbol or item of clothing during working hours is reasonable having regard to the circumstances of the employment, including—
 - (i) the workplace safety, productivity, communications and customer service requirements of that employment, and
 - (ii) the industry standards of that employment.
- (7) Subsections (1)–(6) do not apply to employment—
- (a) for the purposes of a private household, or
 - (b) where the number of persons employed by the employer, disregarding any persons employed within the employer's private household, does not exceed 5.
- (8) For the purposes of subsection (7)(b), a corporation is to be regarded as the employer of the employees of any other corporation that is a related body corporate of that corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.
- (9) Subsections (4) and (5) do not apply to employment by—
- (a) a religious ethos organisation, or
 - (b) a body established to propagate religion under section 56.

22S Qualifying bodies

- (1) It is unlawful for an authority or a body which is empowered to confer, renew or extend an authorisation or a qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in of an occupation (qualifying body) to discriminate against a person on the ground of religious beliefs or religious activities—
- (a) by refusing or failing to confer, renew or extend the authorisation or qualification, or
 - (b) in the terms on which it is prepared to confer the authorisation or qualification or to renew or extend the authorisation or qualification, or
 - (c) by withdrawing the authorisation or qualification or varying the terms or conditions upon which it is held.

- (2) Without limiting subsection (1), it is unlawful for a qualifying body to –
- (a) restrict, limit, prohibit or otherwise prevent a person from engaging in a protected activity, or
 - (b) punish or sanction a person:
 - (i) for engaging in a protected activity, or
 - (ii) because an associate of the person engaged in a protected activity.
- (3) In subsection (2), protected activity means:
- (a) a religious activity performed by the person that:
 - (i) occurs at a time other than when the person is performing work and at a place other than the person’s place of work, and
 - (ii) does not include any direct criticism of, or attack on, or does not cause any direct and material financial detriment to, the qualifying body or the person’s employer.
 - (b) a religious activity performed by an associate of the person that does not include any direct criticism of, or attack on, or does not cause any direct and material financial detriment to, the qualifying body or the person’s employer.
- (4) For the avoidance of doubt, the following do not constitute direct and material financial detriment to a qualifying body or the person’s employer for the purposes of subsections 3(a) and 3(b)—
- (a) any boycott or secondary boycott of the qualifying body or the person’s employer by other persons because of the person’s activity, or the activity of their associate, or
 - (b) the withdrawal of sponsorship or other financial or corporate support for the qualifying body or the person’s employer because of the person’s activity, or the activity of their associate.
- (5) Subsections (2)-(4) do not apply to –
- (a) a religious ethos organisation, or
 - (b) a body established to propagate religion under section 56

22V Education

- (1) It is unlawful for an educational authority to discriminate against a person on the ground of religious beliefs or religious activities –
- (a) by refusing or failing to accept the person’s application for admission as a student, or
 - (b) in the terms on which it is prepared to admit the person as a student.
- (2) It is unlawful for an educational authority to discriminate against a student on the ground of religious beliefs or religious activities—
- (a) by denying the student access, or limiting the student’s access, to any benefit provided by the educational authority, or
 - (b) by expelling the student or subjecting the student to any other detriment.
- (3) Without limiting subsections (1) and (2), it is unlawful for an educational authority to –
- (a) restrict, limit, prohibit or otherwise prevent a student from engaging in a protected activity, or
 - (b) punish or sanction a student:
 - (i) for engaging in a protected activity, or
 - (ii) because an associate of the student engaged in a protected activity.
- (4) In subsection (3), **protected activity** means:
- (a) a religious activity performed by a student or their associate that:
 - (i) occurs at a time other than when the person is receiving education and at a place other than the person’s place of education, and

	(ii) does not include any direct criticism of, or attack on, or does not cause any direct and material financial detriment to, the educational authority.
(5)	For the avoidance of doubt, the following do not constitute direct and material financial detriment to an educational authority for the purposes of subsections 4(a) and 4(b)—
	(a) any boycott or secondary boycott of the educational authority by other persons because of the student’s activity, or the activity of their associate, or
	(b) the withdrawal of sponsorship or other financial or corporate support for the educational authority because of the student’s activity, or the activity of their associate.
(6)	Subsections (3)-(5) do not apply to –
	(a) a religious ethos organisation, or a body established to propagate religion under section 56.

Committee comment

2.187 The Committee recommends the legislative approach in this Relevant Provision as suitable for a Government Bill with the following four amendments:

- a) In section 22N(4), at the end of (a)(ii) and (b), add the words ‘or the employer’s staff’. This amendment should also be made for the protected activities in sections 22S (Qualifying bodies) and 22V (Education) – that is, broadening the exception clauses to cover the employer’s staff as well as employers.
- b) To correct a drafting error at section 22N(9), change first words to read ‘Subsections (3) – (5) do not apply ...’
- c) In section 22N(9), also insert new subsection (c), as follows: ‘of brand ambassadors employed or contracted solely for the purpose of promoting an organisation’s brand, values and public image’; and correct syntax in (a) and (b) by inserting ‘by’ at the beginning of each clause and deleting ‘by’ after ‘employment’ in the first line of (9).
- d) To correct a drafting error at section 22V(4), in first line of (a), delete ‘or their associate’ and add a new subsection (b) as follows: ‘a religious activity performed by an associate of the student that does not include any direct criticism of, or attack on, or does not cause any direct and material financial detriment to, the educational authority.’

5. Other employment clauses (Sections 22N(6), 22O, 22P, 22Q, 22R, 22T and 22U)

Summary

2.188 This section details the other employment clauses in the Bill, namely the protections of religious dress in the workplace (section 22N(6)), as well as discrimination in a variety of workplaces, including those affecting commission agents, contract workers, partnerships, industrial organisations and employment

agencies (sections 22O, 22P, 22Q, 22R, 22T). The section also considers the Bill's genuine occupational exception (section 22U).

- 2.189 In relation to religious dress in the workplace, stakeholders expressed support for the Bill's protections including some who submitted that these protections were not strong enough. There was concern that the provisions were overly complex and may result in organisational and logistical difficulties in the workplace.
- 2.190 The Bill's exception to protections against religious discrimination (section 22U) on the grounds of genuine occupational needs had stakeholder support. Concerns were raised, however, that the qualifications for an exception were too broad and that section 56 of the Act already provides adequate exceptions for religious bodies.

Committee comment

- 2.191 The Committee notes the general consensus of support amongst stakeholders regarding protections for religious dress in the workplace, other employment protections, and exceptions for genuine occupational needs.
- 2.192 The provisions are similarly worded to existing provisions under the *Anti-Discrimination Act 1977* (the Act), in relation to discrimination against commission agents, contract workers, partnerships and industrial organisations for a variety of protected attributes.²²²
- 2.193 The Committee recommended that the Government Bill should minimise any potential complexity when drafting these provisions.

Stakeholder views

Religious dress in the workplace

- 2.194 Section 22N(6) introduces protections for employees to wear religious symbols or clothing during work hours where it is reasonable having regard to the circumstances of the employment, including:
- the workplace safety, productivity, communications and customer service requirements of that employment
 - the industry standards of that employment
- 2.195 The Explanatory Note to the Bill state that this provision is modelled on existing protections in Western Australia, the ACT and the Northern Territory.²²³
- 2.196 Freedom for Faith expressed support for the Bill's explicit protections of religious dress:

²²² See generally the existing provisions in the Act for each class of worker in relation to discrimination on the grounds of race, sex, age, homosexuality, transgender status, marital or domestic status, disability, and responsibilities as a carer.

²²³ [Explanatory Note, Anti-Discrimination Amendment \(Religious Freedoms and Equality\) Bill 2020](#), p3, viewed 22 March 2021

Section 22N also sensibly provides explicit protection against discrimination on the basis of the wearing of religious symbols or clothing by an employee.²²⁴

- 2.197 The Anglican Church Diocese of Sydney noted that the Bill's protections were consistent with existing human rights law. By way of example, the Diocese submitted that section 22N(6) was consistent with the European Court of Human Rights decision in the *Eweida* case and that similar protections were not included in the Commonwealth Bills.²²⁵
- 2.198 COMPPS argued that, while it supported the right of employees to demonstrate their religion through their dress or the wearing of symbols, it is sometimes necessary for sporting organisations to exert some control over the clothing an employee wears:
- COMPPS subscribes to the right of all employees to demonstrate their religion via dress, appearance or behaviour however while this right is important, there may be instances in major competitive sporting organisations where it is desirable or necessary for the sport to limit or exert control over certain types of dress, appearance or behaviours. This may, for example, be a requirement of participation of an Australian representative team in international sporting competitions governed by other bodies.²²⁶
- 2.199 For this reason COMPPS recommended that the exemptions to the religious dress protections be broadened to include team uniform requirements.²²⁷
- 2.200 Some stakeholders, including ADLEG, Kingsford Legal Centre UNSW, the AMAN and PIAC queried the need for section 22N(6) explicit protections of religious dress in the workplace when this was already provided for in other parts of the Bill on indirect discrimination in employment.²²⁸
- 2.201 Kingsford Legal Centre UNSW submitted that the protections provided by section 22N(6) were overly complex, as the provisions require wearers of religious dress to 'satisfy a complex, multi-factor legal test' involving 'at least five different, yet overlapping circumstances of employment – namely the workplace safety, productivity, communications, customer service requirements and industry standards of employment'.²²⁹
- 2.202 Muslim Women Australia, the LMA and ANIC each submitted that exceptions to the protections for religious dress in the workplace contained in section 22N(6) could disproportionately discriminate against Muslim women who wear the religious veil as women of the Muslim faith are more likely to wear religious dress than those of other religions such as Christianity. Accordingly, the organisations

²²⁴ Submission 126, Freedom for Faith, p5

²²⁵ Submission 120, Anglican Church Diocese of Sydney, p19; *Eweida and Others v The United Kingdom* (European Court of Human Rights, Chamber, Application Nos. 48420/10, 51671/10 and 36516/10, 15 January 2013)

²²⁶ Submission 99, Coalition of Major Professional and Participation Sports, p6

²²⁷ Submission 99, Coalition of Major Professional and Participation Sports, p6

²²⁸ Submission 34, Australian Discrimination Law Experts Group, p26; Submission 52, Kingsford Legal Centre UNSW Australia, p8; Submission 89, Australian Muslim Advocacy Network, p14; Submission 56, Public Interest Advocacy Centre, p11

²²⁹ Submission 52, Kingsford Legal Centre UNSW Australia, p8; Answers to questions taken on notice, [Kingsford Legal Centre UNSW Australia](#), 20 November 2020, p1, viewed 22 March 2021

recommended that the section be amended to address the potential impacts on Muslim women or removed from the Bill altogether.²³⁰

- 2.203 The Multicultural Communities Council NSW suggested that section 22N(6) should not protect the wearing of religious symbols or clothing in the workplace if it is insulting or confrontational to other religious beliefs or non-believers.²³¹

Protections for categories of work and workers

- 2.204 Sections 22O-22R of the Bill specify that protections from discrimination extends to specific categories of work and workers, including commission agents, contract workers, partnerships and industrial organisations. The provisions in the Bill are similar to provisions used for protection of other attributes in the Act.

- 2.205 Stakeholders, including the LMA, Freedom for Faith, the Catholic Women's League of Australia NSW and the AMAN, expressed broad support for the Bill's protection of workers and work specified under sections 22O-22R.²³²

- 2.206 With specific reference to the protections provided to contract workers under section 22P, the LMA stated:

The LMA supports the introduction of section 22P that shields contract workers from discrimination on the ground of their religious beliefs or activities. The inherent vulnerability faced by contract workers is well established and this provision legislates in support of them.²³³

- 2.207 The Catholic Bishops of NSW and AMEC stated that the protections were particularly necessary for contract workers as they are not currently protected from discrimination under the *Fair Work Act 2009 (Cth)*.²³⁴

- 2.208 The NSW Teachers Federation submitted that section 22R, which applies to industrial organisations, would have the effect of undermining the right of the Federation to require members to follow its Code of Ethics, which emphasises protecting civil liberties, and hinder its capacity to make decisions in relation to its members.²³⁵

- 2.209 In relation to section 22O (commission agents) and section 22P (contract workers), Dr Greg Walsh suggested that the sections do not protect small businesses that employ multiple employees working less than full-time. Dr Walsh suggested that this should be addressed to ensure the Bill provides protection for businesses that employ up to five full-time employees or the equivalent.²³⁶

²³⁰ Submission 59, Muslim Women Australia, pp9-10; Submission 63, Lebanese Muslim Association, p8; Submission 65, Australian National Imams Council, p12

²³¹ Submission 15, Multicultural Communities Council of NSW, p1

²³² Submission 63, Lebanese Muslim Association, p6; Submission 126, Freedom for Faith, p5; Submission 89, Australian Muslim Advocacy Network, p3; Submission 25, Catholic Women's League Australia NSW, pp3-4; Submission 69, Dr Michael Casey – PM Glynn Institute (Australian Catholic University), p6

²³³ Submission 63, Lebanese Muslim Association, p6

²³⁴ Submission 72, Catholic Bishops of NSW and AMEC, p11

²³⁵ Submission 75, NSW Teachers Federation, p5

²³⁶ Submission 104, Dr Greg Walsh, p2

2.210 The LMA pointed out that the protections provided by section 22Q (partnerships) apply only to partnerships consisting of six or more persons, and that this threshold should be removed to protect workers employed by smaller partnerships. LMA noted that employees of small partnerships may be particularly vulnerable to discrimination as these partnerships attract less public attention and scrutiny.²³⁷

Genuine occupational qualification

2.211 Section 22U of the Bill provides for an exception to protections against religious discrimination in circumstances where there is a genuine occupational requirement necessitating the discrimination. Similar exceptions exist for other protected attributes under the Act, where a protected attribute would prevent the person from performing a genuine occupational qualification of the job. For example, a requirement that employees must be of one sex only, if being of that sex is clearly an essential requirement of the job.

2.212 Some stakeholders, including ACA, submitted that the exception was a necessary provision because religious conviction is at the very core of certain vocations. ACA used the examples of Muslim clerics and Christian chaplains needing to be adherents of the Muslim and Christian faiths, respectively, to illustrate this point:

- There are certain jobs e.g. Muslim clerics, Christian chaplains etc that require the applicants to be adherents of that faith.
- To allow someone who was not of this faith to claim that they were discriminated against if they were not employed in this role is not reasonable.
- To allow non-religious organisations to discriminate against people of a particular religion for roles that are not inherently religious would not be acceptable.²³⁸

2.213 However, stakeholders, including ADNSW, Kingsford Legal Centre UNSW, PIAC, NSW Young Lawyers and CAPA submitted that the qualifications for an exception provided for by section 22U were too broad and had the potential to permit discrimination in the workplace. As a result they recommended that the section be re-drafted or removed from the Bill.²³⁹

2.214 PIAC, ADNSW, Equality Australia and ADLEG suggested that section 22U was not necessary on the basis that section 56 of the Act already provided adequate protections for religious bodies.²⁴⁰

Relevant provisions

22N Discrimination against applicants and employees

...

²³⁷ Submission 63, Lebanese Muslim Association, p8

²³⁸ Submission 5, Australian Christian Alliance, pp7-8

²³⁹ Submission 52, Kingsford Legal Centre UNSW Australia, p9; Submission 56, Public Interest Advocacy Centre, pp14-15; Submission 138, Council of Australian Postgraduate Associations, p5; Submission 86, NSW Young Lawyers, pp10-11; Submission 55, Anti-Discrimination NSW, p10

²⁴⁰ Submission 56, Public Interest Advocacy Centre, pp14-15; Submission 55, Anti-Discrimination NSW, p10; Submission 51, Equality Australia, p11; Submission 34, Australian Discrimination Law Experts Group, p20

- (6) It is unlawful for an employer to discriminate against a person on the ground of religious beliefs or religious activities by refusing the employee permission to wear any religious symbol or any religious clothing during work hours, but only if—
- (a) the symbol or item of clothing is of a kind recognised as necessary or desirable by persons with the same religious beliefs or who engage in the same religious activities as that of the employee, and
 - (b) wearing the symbol or item of clothing during working hours is reasonable having regard to the circumstances of the employment, including—
 - (i) the workplace safety, productivity, communications and customer service requirements of that employment, and
 - (ii) the industry standards of that employment.
- (7) Subsections (1)–(6) do not apply to employment—
- (a) for the purposes of a private household, or
 - (b) where the number of persons employed by the employer, disregarding any persons employed within the employer’s private household, does not exceed 5.
- (8) For the purposes of subsection (7)(b), a corporation is to be regarded as the employer of the employees of any other corporation that is a related body corporate of that corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

22O Discrimination against commission agents

- (1) It is unlawful for a principal to discriminate against a person on the ground of religious beliefs or religious activities—
- (a) in the arrangements the principal makes for the purpose of determining who should be engaged as a commission agent, or
 - (b) in determining who should be engaged as a commission agent, or (c) in the terms on which the principal engages the person as a commission agent.
- (2) It is unlawful for a principal to discriminate against a commission agent on the ground of religious beliefs or religious activities—
- (a) in the terms or conditions that are afforded to the commission agent, or
 - (b) by denying or limiting access to opportunities for promotion, transfer or training, or to any other benefits associated with the position of commission agent, or
 - (c) by terminating the commission agent’s engagement or subjecting the commission agent to any other detriment.

22P Discrimination against contract workers

It is unlawful for a principal to discriminate against a contract worker on the ground of religious beliefs or religious activities—

- (a) in the terms on which the principal allows the contract worker to work, or
- (b) by not allowing the contract worker to work or continue to work, or
- (c) by denying or limiting access to any benefit associated with the work performed by the contract worker, or
- (d) by subjecting the contract worker to any other detriment.

22Q Partnerships

- (1) It is unlawful for a firm consisting of 6 or more partners, or for any one or more of 6 or more persons proposing to form themselves into a partnership, to

discriminate against a person on the ground of religious beliefs or religious activities—

- (a) in the arrangements made for the purpose of determining who should be offered a position as partner in the firm, or
 - (b) in determining who should be offered a position as partner in the firm, or
 - (c) in the terms on which the person is offered a position as partner in the firm.
- (2) It is unlawful for a firm consisting of 6 or more partners to discriminate against a partner on the ground of religious beliefs or religious activities—
- (a) by denying the partner access, or limiting the partner's access, to any benefit arising from membership of the firm, or
 - (b) by expelling the partner from the firm, or (c) by subjecting the partner to any other detriment.

22R Industrial organisations

- (1) It is unlawful for an industrial organisation to discriminate against a person who is not a member of the industrial organisation on the ground of religious beliefs or religious activities—
- (a) by refusing or failing to accept the person's application for membership, or
 - (b) in the terms on which it is prepared to admit the person to membership.
- (2) It is unlawful for an industrial organisation to discriminate against a person who is a member of the industrial organisation on the ground of religious beliefs or religious activities—
- (a) by denying the person access, or limiting the person's access, to any benefit provided by the industrial organisation, or
 - (b) by depriving the person of membership or varying the terms of the person's membership, or
 - (c) by subjecting the person to any other detriment

22T Employment agencies

It is unlawful for an employment agency to discriminate against a person on the ground of religious beliefs or religious activities—

- (a) by refusing to provide the person with any of its services, or
- (b) in the terms on which it offers to provide the person with any of its services, or
- (c) in the manner in which it provides the person with any of its services.

Committee comment

- 2.215 The Committee recommends the legislative approach in this Relevant Provision as suitable for a Government Bill.

6. State laws and programs (Section 22Z)

Summary

- 2.216 This section examines section 22Z regarding protection against discrimination on the grounds of religious beliefs or activities in relation to functions performed under a State law or program.

- 2.217 Under section 22Z(1), it is unlawful to discriminate against a person (including a REO) on the ground of religious beliefs or activities in the course of carrying out any State function.
- 2.218 Section 22Z(2) provides that a person discriminates against a REO if the person requires the REO to engage in conduct in a manner contrary to its doctrines, tenets, beliefs or teachings when performing functions under a State law or program.
- 2.219 Supporting stakeholders considered that section 22Z was an important provision to protect organisations from discrimination where they may not want to provide services or carry out activities that conflict with their religious beliefs (for example, hiring out a school hall to groups opposed to their religious doctrines).
- 2.220 Other stakeholders raised concerns that the provision may limit access by individuals to services and programs if the REO restricts what it provides.

Committee Comment

- 2.221 The Committee considers that there should be protection from religious discrimination in relation to functions performed by a person under a State law or program.
- 2.222 The Committee also considers that a person should be held to have discriminated against an REO if they require the REO to engage in conduct contrary to its doctrines, tenets, beliefs or teachings when performing functions under a State law or program.
- 2.223 Equally, the Committee acknowledges concerns raised about REOs restricting the services they provide, or access to those services, based on their doctrines, tenets, beliefs or teachings. Stakeholders considered that a REO should not be held to have discriminated by doing so.
- 2.224 The Committee acknowledges concerns about the impact of section 22Z(2) but considers that they could be addressed at the design and application stage for State grants and contracts. For example, if the Government requires universal access to be provided, it may establish the relevant application criteria. In doing so, the Government should not be held to have discriminated against REOs on the basis of religion.

Stakeholders' views

Impact on State government intervention

- 2.225 Stakeholders supporting the provision, including Catholic Bishops of NSW and AMEC, the Anglican Church Diocese of Sydney, the Baptist Association of NSW and ACT, the Church of Jesus Christ Latter-day Saints, Lilyrose Antenatal Clinic and Lilyrose Pregnancy Help, the Australian Higher Education Alliance and Freedom for Faith, considered that it provided protection for REOs from State requirements to

comply with conditions in functions or programs that are contrary to their doctrines, tenets, beliefs or teachings.²⁴¹

- 2.226 The Catholic Bishops of New South Wales and AMEC considered that the protection for REOs under section 22Z was very important for the free exercise of religion.

The use of government funding or the eligibility for State based programs as a means to coerce religious institutions to act against their beliefs is another potential area of discrimination against people of faith and a limit on the free exercise of religion guaranteed by international human rights instruments. It is appropriate that this section addresses such risks.²⁴²

- 2.227 The Anglican Church Diocese of Sydney also considered that the protection was necessary to prevent State funding and programs being used to force religious institutions to act against their beliefs.²⁴³ The Diocese acknowledged that there was concern about religious institutions that receive public funding and are not required to comply with State Government policies. However, the Diocese noted that these concerns were based on a misunderstanding of the provision:

The argument is increasingly being put (and no doubt will appear in many submissions opposed to this Bill) that it is simply unacceptable that religious institutions which receive public funding for the provision of education, health or welfare services are not required to comply with State Government policies. This criticism fundamentally misunderstands the relationship between the State and religious bodies. A religious body that receives funding from the government does not lose its religious character or purpose by doing so, and should not be forced by financial leverage to act contrary to its religious ethos.

... A religious body not in receipt of government funding is still entitled to rely on the broad anti-discrimination exemption. This is a discriminatory and coercive funding model, which is logically inconsistent. If the religious belief does not warrant the exemption at all, then it should not be exempt. But if the religious belief does warrant the exemption when there is no government funding, then it is improper for the government to use a financial lever to coerce a religious institution to act contrary to its religious tenets. The logical end point of the argument that State policies should override the religious beliefs of institutions which receive public funding is that there should not be publicly funded religious institutions. This is unacceptable.²⁴⁴

- 2.228 Bishop Michael Stead, Anglican Bishop of South Sydney, considered that section 22Z ensured that the State was bound to the same principles as individuals are bound under the Bill, and particularly that the State is not able to use "its grant-

²⁴¹ Submission 72, Catholic Bishops of NSW and AMEC, pp13-14; Submission 120, Anglican Church Diocese of Sydney, p22; Submission 42, Baptist Association of NSW and ACT, p3; Submission 61, The Church of Jesus Christ of Latter-day Saints, p33; Submission 47, Lilyrose Antenatal Clinic and Lilyrose Pregnancy Help, p2; Submission 32, Australian Christian Higher Education Alliance, p8; Submission 126, Freedom for Faith, p5

²⁴² Submission 72, Catholic Bishops of NSW and AMEC, p14

²⁴³ Submission 120, Anglican Church Diocese of Sydney, p22

²⁴⁴ Submission 120, Anglican Church Diocese of Sydney, pp22-23

giving powers or access to public buildings in a discriminatory way against faith groups".²⁴⁵

2.229 The Baptist Churches of NSW and ACT stated:

We strongly support the inclusion of clause 22Z, which prevents the State from discriminating based on religious grounds. The rich diversity of options offered to the Australian public in education and services is enabled because of the ability for those organisations to operate in accordance with their values and beliefs. The risk for religious ethos organisations is the withholding of State funding based upon religious belief, thus requiring religious ethos organisations to operate against their beliefs in order to accept funding.²⁴⁶

2.230 FamilyVoice Australia and the Seventh-day Adventist Church supported section 22Z on the basis that there should be separation between church and State, and that the State should be neutral towards religion.²⁴⁷ FamilyVoice Australia and the Canberra Declaration both considered that the State should not be able to impose conditions in funding contracts that exclude some religious bodies from the receipt of funding or otherwise force them to act inconsistently with their religious beliefs.²⁴⁸

2.231 Mr Bilal Rauf, Spokesperson and Advisor, Australian National Imams Council (ANIC), noted that ANIC saw the need for section 22Z and did not hold any concerns about the provision. Mr Rauf stated:

[Section 22Z] is really ensuring that the religion of the religious identity does not become a factor in terms of the determination of ... grants or other such schemes, et cetera. We can see the need for it and it is really then a question of how it is applied.²⁴⁹

2.232 The Seventh-day Adventist Church stated:

We believe in the separation of church and State, and as such we hold the view that the State should be neutral towards religion. Therefore, we support clause 22Z, as this will ensure that the state does not impose conditions in the funding of contracts that exclude some religious bodies from receiving funding, or alternatively, cause them to compromise their religious ethos.²⁵⁰

2.233 A number of schools and other education-related stakeholders, including Catholic Schools NSW, the Australian Association of Christian Schools and the Australian Christian Higher Education Alliance, supported the provision because it prevents government from imposing conditions that exclude religious schools from funding,

²⁴⁵ Bishop Michael Stead, Bishop of South Sydney, Anglican Church Diocese of Sydney, Transcript of evidence, 6 November 2020, p31

²⁴⁶ Submission 42, Baptist Association of NSW and ACT, p3

²⁴⁷ Submission 70, Seventh-day Adventist Church, p4; Submission 10, FamilyVoice Australia, p8

²⁴⁸ Submission 10, FamilyVoice Australia (NSW), p5; Submission 95, The Canberra Declaration, p16

²⁴⁹ Mr Bilal Rauf, Spokesperson and Advisor, Australian National Imams Council, Transcript of evidence, 5 November 2020, p20

²⁵⁰ Submission 70, Seventh-day Adventist Church, p4

and removes pressure for those schools to act inconsistent with their religious beliefs.²⁵¹

2.234 The Australian Association of Christian Schools stated their supported for section 22Z thus:

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 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.²⁵²

2.235 Similarly, Christian Schools Australia stated:

Finally, and critically important in relation to Christian schools which cannot operate without registration under the *Education Act 1990* (NSW), the proposed section 22Z provides an essential safeguard for Christian schools and other REOs.²⁵³

2.236 There were a number of stakeholders, including ALHR, WEL, ACON, Rape and Domestic Violence NSW, Inner West Council and Dying with Dignity NSW, who opposed this provision due to concerns that REOs could challenge State laws and programs.²⁵⁴

2.237 ADNSW expressed concerns about the provisions regarding State laws and programs and considered that government discretion could be severely limited when awarding contracts and grants. For example, ADNSW highlighted that REOs may be able to claim that public health orders containing COVID-19 restrictions for places of worship amounted to discrimination. ADNSW also considered this provision problematic where REOs provide publicly funded welfare services.²⁵⁵

2.238 Kingsford Legal Centre UNSW recommended that section 22Z should be removed from the Bill and submitted that this section would introduce significant uncertainty that may cause inconsistencies with other areas of law.²⁵⁶

²⁵¹ Submission 111, Australian Association of Christian Schools, pp4-5; Submission 117, Christian Schools Australia Limited, p4; Submission 81, Catholic Schools NSW, p12; Submission 32, Australian Christian Higher Education Alliance, p8

²⁵² Submission 111, Australian Association of Christian Schools, pp4-5

²⁵³ Submission 117, Christian Schools Australia Limited, p4

²⁵⁴ Submission 54, Australian Lawyers for Human Rights p10; Submission 123, Women's Electoral Lobby NSW, p6; Submission 24, ACON, p2; Submission 31, Dying with Dignity NSW, p5; Submission 49, Rape and Domestic Violence Services Australia, p7; Submission 33, Inner West Council, p2

²⁵⁵ Submission 55, Anti-Discrimination NSW, p11

²⁵⁶ Submission 52, Kingsford Legal Centre UNSW Australia, pp9-10

- 2.239 The LMA noted concern that the provision in section 22Z is not reflected in the other protected attributes of the Act, except for protection from sexual harassment families in the course of conduct of a State program and overlook Aboriginal kinship principle to place Aboriginal children with Aboriginal families in its placements.²⁵⁷
- 2.240 PIAC stated that there was no justification for granting special protection for religious bodies over other organisations under anti-discrimination law, and that the Bill should be amended to ensure that only natural persons could have standing to bring claims under the Act.²⁵⁸
- 2.241 Equality Australia noted that if the provisions were to be introduced, then the ability to challenge government programs, policies, contracts and decisions that conflict with an organisation's beliefs should be available to other organisations that promote other protected attributes under the Act.²⁵⁹
- 2.242 Stakeholders also raised concerns that section 22Z would allow REOs to discriminate in the provision of services which may be wholly or partly funded by the government. Amnesty International Australia, Dr Luke Beck, Dying with Dignity NSW, ALHR, WEL, CAPA, Family Planning NSW, the Australian Association of Social Workers and the LMA expressed the view that organisations receiving public funds should provide public services equally to all individuals.²⁶⁰ ALHR noted that section 22Z "does not accommodate circumstances where a State program or law is pursuing legitimate policy objectives". ALHR considered that this would render the section inconsistent with international law and the ICCPR, which would also then be inconsistent with the objects of the Bill contained in the Explanatory Note (discussed in Chapter 1).²⁶¹

Relevant Provision

<p>22Z State laws and programs</p> <p>(1) It is unlawful for a person to discriminate against another person on the ground of religious beliefs or religious activities—</p> <p>(a) in the course of performing any function under a State law or for the purposes of a State program, or</p> <p>(b) in the course of carrying out any other responsibility for the administration of a State law or the conduct of a State program.</p> <p>(2) Without limiting subsection (1), a person is taken to discriminate against a religious ethos organisation on the ground of religious beliefs or religious activities if the person requires a religious ethos organisation to engage in conduct, including use of its property, in a manner which is contrary to the doctrines, tenets, beliefs or teachings of that organisation—</p>

²⁵⁷ Submission 63, Lebanese Muslim Association, p9

²⁵⁸ Submission 56, Public Interest Advocacy Centre, p16

²⁵⁹ Submission 51, Equality Australia, pp5, 14;

²⁶⁰ Submission 71, Amnesty International Australia, p20; Submission 20, Dr Luke Beck, Associate Professor, Monash University, p3; Submission 57, Family Planning NSW, p5; Submission 31, Dying with Dignity NSW, p5; Submission 62, Australian Association of Social Workers (AASW), p7; Submission 54, Australian Lawyers for Human Rights, p11; Submission 123, Women's Electoral Lobby NSW, p6; Submission 63, Lebanese Muslim Association, p9; Submission 138, Council of Australian Postgraduate Associations, p6; Submission 51, Equality Australia, p13

²⁶¹ Submission 54, Australian Lawyers for Human Rights p11

(a) in the course of performing any function under a State law or for the purposes of a State program, or
 (b) in the course of carrying out any other responsibility for the administration of a State law or the conduct of a State program.

(3) In this section—
State law means—
 (a) an Act, a statutory rule, or a determination made under or pursuant to an Act, or
 (b) an order or award made under or pursuant to such a law.
State program means a program conducted by or on behalf of the State Government.

Committee comment

2.243 The Committee recommends the legislative approach in this Relevant Provision as suitable for a Government Bill with the following amendment:

In section 22Z, renumber (3) to (4), and insert new (3) as follows: ‘For the avoidance of doubt, if a State law or government policy requires service provision available to specified groups of people (including universal service provision) and if a religious ethos organisation, for reasons of religious belief, is unable to meet these requirements in government grant conditions or tender specifications, this does not constitute discrimination.’

7. Discrimination in other areas (Sections 22W, 22X and 22Y)**Summary**

- 2.244 The Committee received limited evidence about the Bill's protections from religious discrimination by providers of goods and services (section 22W), providers of accommodation (section 22X) and registered clubs (section 22Y). It was noted that these provisions mirrored those relating to existing protected attributes under the Act.
- 2.245 Stakeholders who commented on section 22W asserted that the protection from religious discrimination by goods and services providers filled an important gap in existing legislation.
- 2.246 This section also considers evidence received from stakeholders who submitted that section 22W should address the potential for interfaith conflict in the provision of goods and services; whether it should apply to both persons and REOs; and whether all entities (including REOs) engaged in commercial activities should be prohibited from discriminating in the provision of goods and services.
- 2.247 Finally, this section considers provisions relating to the exceptions for registered clubs. In particular, it focuses on provisions concerning the objects of registered clubs (sections 22W(3) and (4)) regarding the provision of benefits for persons with specified religious beliefs or religious activities.

Committee comment

2.248 The Committee notes the limited evidence it received on these matters. The Committee recommends that the Government Bill should incorporate protection

against discrimination to providers of goods, services, and accommodation and registered clubs.

Stakeholder views

Goods and services

2.249 Supporters of the Bill's prevention of religious discrimination in the provision of goods and services pointed to the language used in other heads of discrimination and argued the same protections should extend to religious belief. Both the LMA and the AMAN expressed support on this basis.²⁶²

2.250 The Catholic Women's League stated that the Bill fills a significant gap in the law in relation to the provision of goods and services:

It is extraordinary that under New South Wales law, discrimination in the provision of goods and services on the basis of religious belief or activity is still permitted. This section would rectify what is an obvious gap in our anti-discrimination laws, and so is supported by CWL NSW.²⁶³

2.251 Catholic Bishops of NSW and AMEC stated that the Bill's protection against discrimination in the provision of goods and services was an important inclusion, noting that, currently, a person in NSW would have no recourse under anti-discrimination laws if they were refused service on the basis of their religious beliefs.²⁶⁴

2.252 The Catholic Bishops of NSW and AMEC also noted:

While anti-discrimination laws are often interpreted to apply to natural persons only, and not to corporations, including incorporated religious institutions, it is submitted that the protections afforded by section 22W should apply to both natural persons and religious ethos institutions, so as to ensure that a religious institution is not denied the provision of goods and services because they are a religious institution.²⁶⁵

2.253 NSW Young Lawyers submitted that the combined operation of the definitions in section 22K and the operation of section 22M (REOs taken not to discriminate in certain circumstances) may result in entities engaged in commercial activities being permitted to discriminate in the provision of goods and services. The effect of this, NSW Young Lawyers argued, is that the protection from discrimination in the provision of goods and services provided for by section 22W would be removed and that this was not a necessary measure for 'the full and free enjoyment of religious freedom.'²⁶⁶

Registered clubs

2.254 The Anglican Church Diocese of Sydney stated that the Bill's provisions that relate to registered clubs were preferable to the comparable terms in the Commonwealth Bills, as it would establish appropriate protections for religious

²⁶² Submission 63, Lebanese Muslim Association, p6; Submission 89, Australian Muslim Advocacy Network, p3

²⁶³ Submission 25, Catholic Women's League Australia – NSW Inc, p5

²⁶⁴ Submission 72, Catholic Bishops of NSW and AMEC, p13

²⁶⁵ Submission 72, Catholic Bishops of NSW and AMEC, p14

²⁶⁶ Submission 86, NSW Young Lawyers, p10

clubs or community groups whose ancillary purpose is to cater for a particular religious group.²⁶⁷

- 2.255 Kingsford Legal Centre UNSW noted that section 22Y(3) would allow registered clubs to discriminate on religious grounds if the objects of the registered club include '...providing benefits with specified religious beliefs or religious activities'. They noted that the exception was broader than the registered clubs exception contained in the Act. On the basis that section 22Y(3) is an exception from discrimination law, Kingsford Legal Centre UNSW suggested that it is appropriate for the exception to be narrow and recommended that the exception refer to the 'principle object' of the registered club.²⁶⁸

Relevant provisions

22W Provision of goods and services

It is unlawful for a person who provides goods or services, whether or not for payment, to discriminate against another person on the ground of religious beliefs or religious activities—

- (a) by refusing to provide the other person with those goods or services, or
- (b) in the terms on which the other person is provided with those goods or services.

22X Accommodation

(1) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of religious beliefs or religious activities—

- (a) by refusing the other person's application for accommodation, or
- (b) in the terms on which the principal or agent offers the other person accommodation, or
- (c) by deferring the other person's application for accommodation or according the other person a lower order of precedence in any list of applicants for that accommodation.

(2) It is unlawful for a person, whether as principal or agent, to discriminate against another person on the ground of religious beliefs or religious activities—

- (a) by denying or limiting access to any benefit associated with accommodation, or
- (b) by evicting the other person or subjecting the other person to any other detriment.

(3) Nothing in this section applies to or in respect of the provision of accommodation in premises if the person who provides or proposes to provide the accommodation or a near relative of that person resides, and intends to continue to reside, on those premises.

22Y Registered clubs

(1) It is unlawful for a registered club to discriminate against a person who is not a member of the registered club on the ground of religious beliefs or religious activities—

- (a) by refusing or failing to accept the person's application for membership, or

²⁶⁷ Submission 120, Anglican Church Diocese of Sydney, p21

²⁶⁸ Submission 52, Kingsford Legal Centre UNSW Australia, p9

	(b)	in the terms on which it is prepared to admit the person to membership.
(2)		It is unlawful for a registered club to discriminate against a person who is a member of the registered club on the ground of religious beliefs or religious activities—
	(a)	by denying the person access, or limiting the person's access, to any benefit provided by the registered club, or
	(b)	by depriving the person of membership or varying the terms of the person's membership, or
	(c)	by subjecting the person to any other detriment.
(3)		Nothing in subsection (1) or (2) applies to or in respect of a registered club if the objects of the registered club include providing benefits for persons with specified religious beliefs or religious activities.
(4)		In determining whether the objects of a registered club are as referred to in subsection (3), regard must be had to—
	(a)	the essential character of the registered club, and
	(b)	the extent to which the affairs of the registered club are so conducted that the persons primarily enjoying the benefits of membership are of the religious beliefs, or engage in the religious activities, specified in the objects, and
	(c)	any other relevant circumstance.

Committee comment

2.256 The Committee recommends the legislative approach in this Relevant Provision as suitable for a Government Bill.

8. President's Powers to grant exemptions (Section 126)**Summary**

2.257 The Committee received limited evidence in relation to the proposed amendment to the powers of the President of the Anti-Discrimination Board as set out in section 126 of the *Anti-Discrimination Act 1977*. The Bill proposes to amend the Act so that exemptions cannot be granted for discrimination on the grounds of religious beliefs or religious activities by the President of the ADNSW. Only those exemptions specified in the Bill will apply to religious beliefs and religious activities.

2.258 There were no stakeholders who specifically supported the amendment to section 126 to exclude Part 2B from the President's Powers to grant an exemption. The stakeholders who specifically mentioned the amendment were opposed to it.

2.259 Opposition to the amendment focussed on how prohibiting the President from granting exemptions for religious belief or activity could give religious belief and religious activity a separate status in comparison to other attributes covered by the Act.

Committee comment

2.260 The Committee notes that the Bill's provisions exclude Part 2B, regarding religious discrimination, from section 126 and thereby prevents the President from making an exemption.

2.261 The granting of Exemptions have become commonplace at ADNSW and can be seen as a form of tribunal activism. In its submission to the Inquiry, ADNSW expressed its concern about the Bill's provisions for Religious Ethos Organisations, such that:

... there is no requirement that the beliefs accord with the current, accepted or mainstream beliefs of the religion, meaning that archaic and outdated interpretations of religious texts could be used to justify conduct that is currently unlawful.²⁶⁹

2.262 It would be completely unacceptable if, in administering new anti-religious-discrimination provisions in the Act, ADNSW took it upon itself to start classifying "accepted or mainstream" religious beliefs or those it deems to be "archaic and outdated". ADNSW cannot be allowed to act as the chief theological authority in NSW and use S.126 exemption powers for this purpose. It would undermine the very purpose of the new provisions and lead to the arbitrary approval of various forms of religious discrimination by an unelected administrative body.

Stakeholders' views

Opposition to amending section 126

2.263 Section 126 allows for what could be regarded as discrimination through special temporary measures or exemptions to the Act. The exemptions, made by the President, for example, allow businesses, and government departments and agencies to advertise designated positions.²⁷⁰

2.264 The other attributes covered by the Act include race, sex, disability, age, marital or domestic status, responsibilities as a carer, homosexuality and transgender status. All of these may have exemptions issued by the President.²⁷¹ It was argued by ADLEG, Kingsford Legal Centre UNSW, PIAC and the NSW Society of Labor Lawyers that for the Act to be consistent, section 126 should apply to the entire Act to allow exemptions to be equally available.²⁷²

2.265 ADNSW opposed the exclusion of Part 2B from the President's power to grant temporary exemptions on the basis that this would establish religion as a special category under the Act.²⁷³

2.266 Mr Ghassan Kassisieh, Legal Director, Equality Australia, explained how discrimination law in NSW accepts that there are certain circumstances in which discrimination may be suitable to favourably assist a person of a particular background or attribute.²⁷⁴

²⁶⁹ Submission 55, Anti-Discrimination NSW, p7

²⁷⁰ Submission 51, Equality Australia, p19; Submission 75, NSW Teachers Federation, p5

²⁷¹ Submission 34, Australian Discrimination Law Experts Group, p24; Submission 56, Public Interest Advocacy Centre, p17; Submission 75, NSW Teachers Federation, p5

²⁷² Submission 34, Australian Discrimination Law Experts Group, p24; Submission 52, Kingsford Legal Centre UNSW Australia, p10; Submission 56, Public Interest Advocacy Centre, p17; Submission 87, NSW Society of Labor Lawyers, p5

²⁷³ Submission 55, Anti-Discrimination NSW, p12; Dr Annabelle Bennett, President, Anti-Discrimination NSW, Transcript of evidence, 16 November 2020, p5

²⁷⁴ Mr Kassisieh, Transcript of evidence, 23 October 2020, p25

2.267 The NSW Society of Labor Lawyers noted that section 126 is intended to remedy 'unforeseen consequences' of the Act. The Society argued that similar to other protected attributes, there may be unforeseen consequences in the operation of the proposed Part 2B if enacted. Retaining section 126 in its current form would allow the President, in certain circumstances, to grant an exemption. The Society also commented that historically, Presidents use their exemption power conservatively.²⁷⁵

Relevant Provision

2.268 Under the existing section 126(1) of the Act, the President may publish an order granting a person, a class of persons, an activity or class of activity (including any other matter or circumstance) an exemption from the Act for no longer than 10 years. The orders can only be made, renewed, varied or revoked upon an application by a person and may be subject to review upon application from an affected person under the *Administrative Decisions Review Act 1997*.²⁷⁶

2.269 The Bill amends section 126 to prevent the President from exercising any such powers described above in relation to Part 2B, as inserted by the Bill.

2.270 For clarity, the current form of section 126 of the Act states:

126 Granting of exemptions by President

(1) Granting of exemptions The President may, by order published in the Gazette, grant an exemption from this Act or the regulations or such parts of this Act or the regulations as are specified in the order in respect of—

- (a) a person or class of persons, or
- (b) an activity or class of activity, or
- (c) any other matter or circumstance specified in the order.

(2) An exemption is subject to such conditions, if any, as may be specified in the order.

(3) Duration of exemptions An exemption remains in force for the period specified in the order, which cannot be more than 10 years.

(4) Renewal of exemptions The President may renew any exemption, for no more than 10 years at a time, by making a new order in accordance with subsection (1).

(5) Variation and revocation of exemptions The power to make an order conferred by this section includes power, exercisable in the same manner and subject to the same conditions, to vary or revoke any order so made.

(6) Applications in relation to exemptions The President may grant, renew, vary or revoke an exemption only on the written application of a person. The regulations may make provision for or with respect to the making of such applications.

(7) In deciding whether to grant or refuse an application, the President may consult with such persons or bodies as the President considers appropriate in the circumstances.

(8) The President must make a decision on any such application within the period of 60 days after the application is made.

²⁷⁵ Submission 87, NSW Society of Labor Lawyers, p5

²⁷⁶ *Anti-Discrimination Act 1977*, s126(9)

(9) Reviews of exemption decisions by Tribunal An affected person may apply to the Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of any of the following decisions (exemption decisions)—

- (a) a decision to refuse to grant an exemption,
- (b) a decision to refuse to renew an exemption,
- (c) a decision to grant an exemption (whether or not subject to conditions),
- (d) a decision to vary or revoke an order granting an exemption.

(10) For the purposes of subsection (9), a person is an affected person in relation to an exemption decision if—

- (a) the person applied for the decision or for the grant or renewal of the exemption to which the decision relates, or
- (b) the person is otherwise directly affected by the decision.

(11) Section 53 (Internal reviews) of the *Administrative Decisions Review Act 1997* does not apply to any exemption decision.

2.271 The Bill proposes amending section 126 as follows:

[3] Section 126 Granting of exemptions by President

Omit “The President” from section 126(1). Insert “Other than for Part 2B, the President”.

Committee comment

2.272 The Committee recommends the legislative approach in this Relevant Provision as suitable for a Government Bill.

Chapter Three – Other issues

Vilification

Summary

- 3.1 Vilification on the grounds of race (section 20C), homosexuality (section 49ZG), transgender status (section 38S) or HIV/AIDS status (section 49ZXB) is unlawful under the current provisions of the Act. The Act defines vilification as a public act which incites hatred towards, serious contempt for, or severe ridicule of, a person or group of persons. Religious belief does not of itself constitute a current basis for vilification under the existing Act.
- 3.2 In certain circumstances, vilification may be a criminal offence if accompanied by intentional or reckless threats or incitement to violence towards another person or group of persons. This is encompassed under the provisions of section 93Z of the *Crimes Act 1900* (NSW) and replaces a previous category of serious vilification offences in the Act.
- 3.3 It should be noted that although the Bill does not propose to add religious vilification as a separate category in the Act, the Committee received evidence calling for its inclusion through an amendment to the Bill. These submitters argued that protection from vilification on the basis of religious activity and religious belief should be provided on the same basis as race, sex and other heads of discrimination under the Act.

Committee comment

- 3.4 The Committee notes that some vilification provisions are already contained in anti-discrimination legislation as well as the *Crimes Act 1900*. The Committee notes the calls from stakeholders to extend vilification provisions to religious beliefs and activities, especially given the inconsistency of the treatment of religions which are linked to an individual's ethnicity.
- 3.5 The Committee recommends that the effectiveness of the religious vilification provisions in the NSW *Crimes Act 1900* and whether religious vilification protections are required in the NSW *Anti-Discrimination Act 1977* should be assessed as part of a broad-based review of the Act.

Relevant provisions

- 3.6 As outlined above, the Act contains a number of provisions making it a civil offence to publicly incite hatred towards, serious contempt for, or severe ridicule of a person on particular grounds, including race, homosexuality, transgender status and HIV/AIDS status.²⁷⁷
- 3.7 These civil protections in the Act do not extend to vilification on the basis of religious belief. However, section 93Z of the *Crimes Act 1900* (NSW) makes it a

²⁷⁷ Submission 45, Department of Communities and Justice, p8

criminal offence to publicly threaten or incite violence towards a person on a number of grounds, including a specific religious belief or affiliation.

Stakeholder views

The case for additional protection for religious individuals against vilification

3.8 There is support from a range of faith based organisations, including the AMAN and the Muslim Legal Network NSW, as well as other advocacy groups, such as NSW Young Lawyers and the NSW Society of Labor Lawyers, for the introduction of a prohibition on vilification based on religious belief.²⁷⁸

3.9 In advancing the argument for including vilification as a separate category in the Act, PIAC acknowledges the current protections for inciting violence under section 93Z of the *Crimes Act 1900*, but notes that under the Bill as drafted:

... religious belief would not be given the protection of civil vilification provisions, which apply to grounds of race, homosexuality, transgender status and HIV/AIDS status. This is significant given vilification in the Act offers broader protection than that in the *Crimes Act 1900*.²⁷⁹

3.10 PIAC also notes that the current position under the Act benefits some religions, but not all, due to inconsistencies in the interpretation of an individual's ethno-religious origins and the distinction between religious belief and ethnicity.

3.11 In its submission, Muslim Women Australia also commented on section 93Z of the *Crimes Act 1900* and indicated that the section falls short of the necessary protection for Muslims:

... No action has been brought under [section 93Z] to date and it is unclear how the Courts will approach such matters. In any event we submit that it is likely to only be used in the most serious of cases given that the incitement has to be to 'violence'. This would not prevent the vast majority of acts... This issue of vilification of people of faith generally, and the protections afforded against it, is of vital importance to our social fabric.²⁸⁰

3.12 The LMA also submitted that Muslims are left with no avenue to complain of public or online vilification.²⁸¹ Appearing before the Committee on 16 November 2020, a representative of the LMA made a case for adding religious anti-vilifications provisions in the Bill:

Today Muslims are still looking over their shoulder because they are not protected in the same way that other faith groups are...a place where this bill falls dreadfully short is not including protection from vilification for those faith groups that are being added...The whole point of this bill is to make it an even playing field. We are only going half way. With anti-vilification provisions, we go the full way.²⁸²

²⁷⁸ Submission 89, Australian Muslim Advocacy Network, p3; Submission 74, Muslim Legal Network (NSW) Inc, pp5-6; Submission 86, NSW Young Lawyers, p4; Submission 87, New South Wales Society of Labor Lawyers, pp5-6;

²⁷⁹ Submission 56, Public Interest Advocacy Centre, p22

²⁸⁰ Submission 59, Muslim Women Australia, p13

²⁸¹ Submission 63, Lebanese Muslim Association, p9

²⁸² Mr Mahmud Hawila, Adviser, Lebanese Muslim Association, Transcript of evidence, 16 November 2020, pp32, 35

3.13 ANIC cites the lack of any charges brought under section 93Z and asserted that:

Religion is not a protected attribute in the [Act] and Australian Muslims are otherwise unable to avail of the protected category of an “ethno-religious” group. Australian Muslims continue to be readily identifiable by their names, appearance, dress and attendance at places of worship. The discrimination which they experience threatens their freedom to express their religious identity, creates significant stress for their children and youth, and erodes their sense of security and belonging.²⁸³

3.14 At the public hearing on 5 November 2020, a spokesperson for ANIC referred to the large number of submissions from the Muslim community asking for action on vilification:

As I say, going back to the example, vilification is not a foreign concept in the current Act. I mean, I can be homosexual and vilified and I have a protection, but if I am a Muslim and I am vilified or of a minority faith and I am vilified, I do not have the same protection. Unless there is some explanation for that anomaly, and I cannot think of any, why is it that certain attributes even have protection against vilification in the current legislation?

...As I think all of the submissions made on behalf of the Australian Muslim community point out, the one issue where we say that there still are deficiencies in respect of vilification—and that is readily remedied by, for instance, something similar to section 20C.²⁸⁴

3.15 ADLEG supports including vilification protections on the basis of religious belief and activity in the following terms:

There is no reason to protect vilification on the basis of [race, transgender status, homosexuality, and HIV/AIDS status] but not on the basis of religious belief and activity. Four of the other seven state and territory discrimination laws already prohibit religious vilification. Muslim, Christian and other faith groups deserve protection from vilification in the same way that Jewish and Sikh groups are already protected.²⁸⁵

3.16 The need for a remedy is also argued by NSW Young Lawyers who make the case that persons from recognised ethno-religious groups, such as those from the Jewish or Sikh faith who have experienced religious vilification can bring a complaint under the racial vilification provisions of the Act. However, this does not apply to members of the Christian or Muslim faith, who are not recognised as ethno-religious groups and cannot avail themselves of this legal protection.²⁸⁶

²⁸³ Submission 65, Australian National Imams Council, p5

²⁸⁴ Mr Bilal Rauf, Spokesperson, Australian National Imams Council, Transcript of evidence, 5 November 2020, pp12-18

²⁸⁵ Submission 34, Australian Discrimination Law Experts Group, p24

²⁸⁶ Submission 86, NSW Young Lawyers, p4

Calls for a review of the Anti-Discrimination Act 1977

Summary

- 3.17 This section examines the evidence received by the Committee about whether a review of the Act should be undertaken.
- 3.18 Those in support of an upfront review highlighted the age of the Act, the inconsistencies that had arisen through previous amendments, and the potential changes that may be required given discussions about anti-discrimination legislation at the Commonwealth level.
- 3.19 Other stakeholders argued that the protections for religion in the Bill were long overdue and there shouldn't be any further delay to implement the changes. Stakeholders noted that a review of the Act would be worthwhile but that it could occur after the Bill had been passed, to ensure that the protections were put in place as soon as possible.

Committee comment

- 3.20 The Committee notes the stakeholder concerns that a review of the Anti-Discrimination Act is required. While the Committee recommends the Act be reviewed, it is sympathetic to those stakeholders concerned that such a review will delay the extension of protections to religious beliefs and activities. For this reason the Committee recommends that a broad-based review of the Act should not delay the enactment of the Government Bill.

Stakeholder views

A comprehensive review of the Act should take place before it is amended

- 3.21 Several stakeholders, including ADLEG, Community Legal Centres NSW, Equality Australia, Women's Legal Service NSW, PIAC, Australian Association of Social Workers, the Law Society of NSW, Women's Health NSW, NSWCCCL, WEL, Wagga Wagga Health Centre and the NSW Gay and Lesbian Rights Lobby, argued that there should be a broad-based review of the Act before any further amendments were made to it. Conducting a fundamental review of the Act would be a more effective way to ensure people in NSW are given appropriate protection from discrimination on the grounds of religious belief.²⁸⁷ ADLEG, for example, stated that regardless of the merits of any proposed amendments in their own right, no amendments should be made to the Act in its current form.²⁸⁸ They recommended:

... a wider, expert review of the [Act] which includes consideration of how religious belief and activity should be added and constructed as protected attributes.²⁸⁹

²⁸⁷ Submission 34, Australian Discrimination Law Experts Group, p6; Submission 50, Community Legal Centres NSW, p2; Submission 51, Equality Australia, p21; Submission 53, Women's Legal Service NSW, p3; Submission 56, Public Interest Advocacy Centre, p22; Submission 62, Australian Association of Social Workers, p4; Submission 64, NSW Gay and Lesbian Rights Lobby, p3; Submission 68, The Law Society of New South Wales, p1; Submission 77, Women's Health NSW, p1, Submission 122, NSW Council for Civil Liberties, p7; Submission 123, Women's Electoral Lobby (NSW), p3; Submission 135, Wagga Women's Health Centre Inc, p2

²⁸⁸ Submission 34, Australian Discrimination Law Experts Group, p5

²⁸⁹ Submission 34, Australian Discrimination Law Experts Group, p6

- 3.22 ADLEG argued that the Act is 'a very old statute' whose 'design reflects an approach to addressing discrimination that is two generations old'. They explained that it has been superseded by developments in Australia and internationally.²⁹⁰
- 3.23 They highlighted two flaws in the Act's design which prevent it from performing its task adequately. These are that the design of the Act presumes that:
- a person who has been subject to discriminatory or vilifying treatment has the knowledge, capacity and resources to prove a claim against the perpetrator who is, by definition, in a more powerful position, and
 - individual complaints—whether resolved by conciliation or adjudication—will change the social behaviours and structures that lead to discriminatory and vilifying conduct.²⁹¹
- 3.24 ADLEG also argued that the Act does not provide people in NSW with the same protections against discrimination that are available in other states and territories, including:
- inadequate coverage of protected attributes
 - inadequate protection against vilification
 - extensive exceptions that allow discriminatory conduct without justification, and
 - onerous procedural provisions for complaint and proof.²⁹²
- 3.25 They recommended that rather than attempting to fix these shortcomings through ad hoc amendments, the Act be subjected to an expert review.²⁹³
- 3.26 ADNSW had no objection to the introduction of religion as a protected ground under the Act, but argued that a more comprehensive review of the Act may be a better way to achieve this aim. The review could also cover additional areas for reform as well as religion. For example:
- ... race (with options including providing clarity about which groups are protected under “ethno-religious origin” or protecting religion as a separate ground), together with updating definitions and providing improved protection for the grounds of sex, sex characteristics (intersex persons), sexual orientation, gender identity and gender expression.²⁹⁴
- 3.27 Community Legal Centres NSW and PIAC pointed to the fact that the Act had not been subject to a comprehensive review for more than 20 years.²⁹⁵ Since the previous review of the Act, the Law Society of New South Wales observed that there have been significant developments in anti-discrimination law at the federal

²⁹⁰ Submission 34, Australian Discrimination Law Experts Group, p5

²⁹¹ Submission 34, Australian Discrimination Law Experts Group, p5

²⁹² Submission 34, Australian Discrimination Law Experts Group, p6

²⁹³ Submission 34, Australian Discrimination Law Experts Group, p6

²⁹⁴ Submission 55, Anti-Discrimination NSW, p2

²⁹⁵ Submission 50, Community Legal Centres NSW, p2; Submission 56, Public Interest Advocacy Centre, p21

and international level, in addition to shifting community standards and expectations.²⁹⁶ They stated that it would be beneficial to conduct a detailed review of the Act, which should also consider:

... the operation of the [Act] in full, including the current set of general exemptions available under Part 6, and provide practical recommendations on expanding the scope of the [Act] to cover new grounds of discrimination, including religion and political belief.²⁹⁷

- 3.28 PIAC noted that the Act has many inconsistencies and gaps and had concerns that the proposed Bill would exacerbate these issues. They supported a modern, fit-for-purpose Anti-Discrimination Act and recommended:

... a comprehensive expert review of the [Act], to consider how to protect religious belief and activity while addressing its other major flaws, inconsistencies and omissions.²⁹⁸

- 3.29 Another reason given for the need for a comprehensive review of the Act is that it would be an opportunity to consider the impact of the Commonwealth Bills and any recommendations arising out of the Australian Law Reform Commission's report on the Framework of Religious Exemptions in Anti-Discrimination Legislation.²⁹⁹ Stakeholders, including Equality Australia, Kingsford Legal Centre UNSW, the Buddhist Council of NSW and NSWCCCL, argued that these changes were likely to lead to a national discussion around anti-discrimination, including on the grounds of religious belief. Conducting a review of the Act at this time would allow for better and nationally-consistent legislation in this area.

There is no need for further review which would delay overdue reform

- 3.30 Other stakeholders, including the Australian Family Association, Australian Christian Higher Education Alliance, ACL, Christian Schools Australia and the Anglican Church Diocese of Sydney, considered that a further review of the NSW Act was unnecessary. They argued that the protections against discrimination based on religion provided in the Bill were urgently needed and there should not be any further delay.³⁰⁰

- 3.31 Many organisations highlighted that there had been a number of reviews and reports that recommended better protection from religious discrimination in NSW.³⁰¹

²⁹⁶ Submission 68, The Law Society of NSW, p1

²⁹⁷ Submission 68, The Law Society of NSW, p1

²⁹⁸ Submission 56, Public Interest Advocacy Centre, p21-22

²⁹⁹ Submission 51, Equality Australia, p21; Submission 52, Kingsford Legal Centre UNSW Australia, p11; Submission 55, Anti-Discrimination NSW, pp2; Submission 67, Buddhist Council of NSW and Rainbodhi LGBTQIA+, p5; Submission 122, New South Wales Council for Civil Liberties, p7; Submission 143, NSW Bar Association, p8

³⁰⁰ Submission 22, The Australian Family Association, p2; Submission 32, Australian Christian Higher Education Alliance, p9; Submission 78, Australian Christian Lobby, p2; Submission 117, Christian Schools Australia, p2; Submission 120, Anglican Church Diocese of Sydney, pp2

³⁰¹ NSW Law Reform Commission, Report 92, (1999), *Review of Anti-Discrimination Act 1977 (NSW)*; Joint Standing Committee on Foreign Affairs, Defence and Trade, Inquiry into the status of the human right to freedom of religion or belief, [Interim Report](#), November 2017; Religious Freedom Review, [Report of the Expert Panel](#), viewed 22 March 2021

- 3.32 Similarly, the LMA raised concerns that conducting additional reviews would cause further unnecessary delay for the introduction of important protections. Mr Mahmud Hawila, LMA Advisor, emphasised that:

I want to avoid further reviews and further inquiries when it has been 30 years in the making and some faith groups are still not protected. We are all sitting here today, despite the pandemic and despite this being a very large inquiry, and we can get it done. I think we should seize the opportunity to get it done. I know the LMA and its president, Samier Dandan, have been working incredibly hard over the past 30 years to try and either get the Anti-Discrimination Act amended or to have new legislation put in to protect Muslims. Today Muslims are still looking over their shoulder because they are not protected in the same way that other faith groups are.³⁰²

- 3.33 In response to a Committee question as to whether a more comprehensive review of the Act as a whole would be worthwhile, Mr Christopher Brohier, Legal Counsel for the Australian Christian Lobby, stated that:

If you look at the amendments to the Anti-Discrimination Act almost every section has been amended. That is how legislation works. You start something off and then you seek to amend it and you put something in. In my submission, to say you have to wait to rewrite the whole Act is simply not sensible, respectfully.³⁰³

- 3.34 The Institute for Civil Society also argued that the attempts to provide protection against religious discrimination in the Act were not being treated consistently. Mr Mark Sneddon, Executive Director, Institute for Civil Society, highlighted that when earlier amendments were made to the Act to protect against discrimination on the grounds of disability, homosexuality or on transgender grounds, there were no calls to perform a comprehensive review of the Act.³⁰⁴

- 3.35 The Anglican Church Diocese of Sydney, the Australian Family Association, ACL, Christian Schools Australia, and Professor Michael Quinlan and Professor A Keith Thompson also argued against delaying amending the NSW Act until the finalisation of the consultation for the Commonwealth Bills or the findings and any responses to the ALRC's reference into the Framework of Religious Exemptions in Anti-discrimination Legislation. They argued that the protections provided in the Bill were too urgent and too necessary to delay their introduction any further.³⁰⁵

The Bill should be passed, but a review of the Act would be worthwhile

- 3.36 Some stakeholders suggested that there was an opportunity to take both actions. While the Bill should be passed to ensure that there is sufficient protection against discrimination based on religious beliefs and activities as soon as possible, there should also be a broad review of the Act.

- 3.37 Mr John Steenhof, Principal Lawyer, HRLA, expressed the view that:

³⁰² Mr Mahmud Hawila, Adviser, Lebanese Muslim Association, Transcript of evidence, 16 November 2020, p31

³⁰³ Mr Christopher Brohier, Legal Counsel, Australian Christian Lobby, Transcript of evidence, 23 October 2020, p66

³⁰⁴ Mr Mark Sneddon, Executive Director, Institute for Civil Society, Transcript of evidence, 23 October 2020, p66

³⁰⁵ Submission 2, Professor Michael Quinlan and Professor A Keith Thompson, p12; Submission 22, The Australian Family Association, p2; Submission 117, Christian Schools Australia, p2; Submission 120, Anglican Church Diocese of Sydney, p2; Submission 126, Freedom for Faith, p2

The idea of a root-and-branch review is not mutually inconsistent with passing these long overdue changes to fill what is a clear gap and has been noted as a clear gap for over 20 to 30 years.³⁰⁶

- 3.38 Stakeholders, including the Anglican Church Diocese of Sydney, Freedom for Faith and Mr Mark Sneddon of the Institute for Civil Society, argued that there should not be a delay in NSW in passing the Bill until the Commonwealth Bills are passed by the Australian Parliament and the ALRC concludes its review. However, they noted that when this Commonwealth legislation is in force, that would be an appropriate time for NSW to consider a comprehensive review of the Act. This will allow it to be examined with the view to creating a nationally consistent framework across all states and territories.³⁰⁷

³⁰⁶ Mr John Steenhof, Principal Lawyer, Human Rights Law Alliance, Transcript of evidence, 23 October 2020, p66

³⁰⁷ Submission 120, Anglican Church Diocese of Sydney, p8; Submission 126, Freedom for Faith, p2; Mr Mark Sneddon, Executive Director, Institute for Civil Society, Transcript of evidence, 23 October 2020, p66

Appendix One – Terms of reference

- 1 A Joint Select Committee, to be known as the Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020, be appointed.
- 2 That the Committee inquire and report into the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020, including whether the objectives of the bill are valid and (if so) whether the terms of the bill are appropriate for securing its objectives.
- 3 That the Committee, in undertaking (2), have to regard to:
 - (a) Existing rights and legal protections contained in the Anti-Discrimination Act 1977 (NSW) and other relevant NSW and Commonwealth legislation;
 - (b) The recommendations relevant to NSW from the Expert Panel Report: Religious Freedom Review (2018);
 - (c) The interaction between Commonwealth and NSW anti-discrimination laws and the desirability of consistency between those laws, including consideration of
 - i The draft Religious Discrimination Bill 2019 (Cth) which has been released for public consultation, and
 - ii The Australian Law Reform Commission's reference into the Framework of Religious Exemptions in Anti-discrimination Legislation.
- 4 The Committee will consult with key stakeholders as required.

Appendix Two – Conduct of inquiry

Adopting terms of reference

On 18 June 2020, the Legislative Assembly and the Legislative Council resolved that a Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 be appointed with members of both Houses. The terms of reference for the inquiry are at Appendix 1.

Online survey platform used to obtain the views of the public

The Committee resolved to use a survey online submission process to encourage public participation in the inquiry in an efficient and accessible manner. The online platform used was "SurveyMonkey" and was the primary mechanism for members of the public to share their views on the Bill with the Committee.

The survey online submission platform was open from 3 July 2020 to 21 August 2020. The Committee received 19,502 individual submissions. A report on the survey of online submissions is available on the Committee [website](#).

Call for submissions

The Committee issued a media release and wrote to key stakeholders inviting them to make a submission to the inquiry.

Submissions closed on 21 August 2020. A total of 192 submissions were received from religious leaders, religious communities, academics and legal experts, medical professionals, advocacy groups, and members of the general public.

Unauthorised Disclosure of Committee material

At a deliberative meeting on Monday 21 September 2020, the Committee discussed a media report of 6 September 2020 which indicated the public disclosure of material that was confidential to the Committee.

In view of the seriousness of the public disclosure, the Committee resolved that the Chair write to all Committee Members and Committee staff who had authorised access to the confidential material asking them to provide a written assurance that they had at no time disclosed it to any external third parties (outside of parliamentary staff) and had no knowledge of the source of the disclosure or how it occurred.

The Committee considered that, while the unauthorised disclosure was a serious matter, this particular instance did not obstruct or impede the Committee's work or obstruct or impede the Committee in the exercise of its powers or the performance of its functions.

Public hearings

The Committee held four public hearings at Parliament House in October and November 2020, with witnesses representing religious communities, academics and legal experts, medical professionals, and advocacy groups.

A list of public hearing witnesses is at Appendix Four. Transcripts of evidence taken at the hearings are available via the Committee's webpage.

Appendix Three – Submissions

No.	Author
1	Dr Arnold and Dr Bonython and Dr Matthews
2	Professor Michael Quinlan and Professor A. Keith Thompson
3	Confidential
4	Rainbow Families NSW
5	Australian Christian Alliance (ACA)
6	Dominique Allen
7	Diversity Council Australia (DCA)
8	Dr Patrick Quirk
9	Transcend Australia Ltd
10	FamilyVoice Australia (NSW)
11	Adam Johnston
12	Dr David Claydon, MACE OAM
13	The Golden Sceptre
14	Ms Bethany McAlpine
15	Multicultural Communities Council of NSW
16	Australian Professional Association for Trans Health (AusPATH)
17	Rev David Maher
18	Rev Tom Halls
19	Woollahra Municipal Council
20	Dr Luke Beck
21	Rationalist Society of Australia
22	The Australian Family Association
23	NSW Jewish Board of Deputies
24	ACON
25	Catholic Women's League Australia – New South Wales Inc
26	The Association of Independent Schools of NSW
27	Confidential
28	Mental Health Commission of NSW
29	Rita Joseph
30	ILGA Oceania
31	Dying with Dignity NSW
32	Australian Christian Higher Education Alliance - ACHEA

No.	Author
33	Inner West Council
34	Australian Discrimination Law Experts Group
35	Mr John Kennedy
36	Equal Voices
37	All World Gayatri Pariwar
38	Dr Peter Stuart
39	Public Affairs Commission of the Anglican Church of Australia
40	Ms Sophie York
41	Dr Murray Harvey
42	Baptist Association of NSW and ACT
43	Uniting Church Synod of NSW and ACT
44	Dr Bernadette Tobin AO
45	Department of Communities and Justice
46	Intersex Human Rights Australia (IHRA)
47	lilyrose Antenatal Clinic and lilyrose Pregnancy Help
48	Western Sydney Community Forum
49	Rape and Domestic Violence Services Australia
50	Community Legal Centres NSW
51	Equality Australia
52	Kingsford Legal Centre UNSW Australia
53	Women's Legal Service NSW
54	Australian Lawyers for Human Rights
55	Anti-Discrimination NSW
56	Public Interest Advocacy Centre (PIAC)
57	Family Planning NSW
58	Ambrose Centre for Religious Liberty
59	Muslim Women Australia
60	Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG)
61	The Church of Jesus Christ of Latter-day Saints
62	Australian Association of Social Workers (AASW)
63	Lebanese Muslim Association
64	NSW Gay and Lesbian Rights Lobby
65	Australian National Imams Council
66	Australian Bahá'í Community

No.	Author
67	Buddhist Council of NSW and Rainbodhi LGBTQIA plus Buddhist Community
68	The Law Society of NSW
69	Dr Michael Casey
70	Seventh-day Adventist Church
71	Amnesty International Australia
72	Catholic Bishops of NSW and AMEC
73	NSW Gender Centre
74	Muslim Legal Network (NSW) Inc
75	New South Wales Teachers Federation (NSWTF)
76	Twenty-Ten Association
77	Women's Health NSW
78	Australian Christian Lobby
79	Human Rights Law Centre
80	Human Rights Law Alliance
81	Catholic Schools NSW
82	Religious Freedom Institute Inc.
83	Humanist Society of New South Wales
84	Uniting Network NSW and ACT
85	Australian Federation of Islamic Councils
86	NSW Young Lawyers
87	New South Wales Society of Labor Lawyers
88	Institute for Civil Society
89	Australian Muslim Advocacy Network (AMAN)
90	Ms Beverley Linne Pattenden
91	Aranza Munoz
92	Fair Agenda
93	Brian Tideman
94	Name suppressed
95	The Canberra Declaration
96	Joseph Camenzuli
97	Phil and Michelle Holmden
98	Sex And Gender Education (SAGE)
99	Coalition of Major Professional and Participation Sports (COMPPS)
100	Christian Medical and Dental Fellowship of Australia

No.	Author
101	Confidential
102	Rev Margaret Court AO, MBE
103	Lex Stewart
104	Dr Greg Walsh
105	Australian Association of Buddhist Counsellors and Psychotherapists (AABCAP)
106	St John's Anglican Cathedral, Parramatta
107	Mr Peter Newland
108	Public Health Association of Australia (PHAA)
109	Australian Industry Group (Ai Group)
110	Fellowship of Independent Evangelical Churches (FIEC)
111	Australian Association of Christian Schools
112	Women's Safety NSW
113	Parents for Trans Youth Equity (PTYE)
114	Confidential
115	St Andrew's Cathedral School
116	Falun Dafa Association of Australia Inc
117	Christian Schools Australia Limited
118	Jeff Truscott
119	Institute of Public Affairs
120	Anglican Church Diocese of Sydney
121	Claire Lawson
122	New South Wales Council for Civil Liberties (NSWCCL)
123	Women's Electoral Lobby (NSW)
124	Jack McKenzie
125	The Rev'd Dr Ray Williamson
126	Freedom for Faith
127	NSW Ecumenical Council
128	Confidential
129	Denise Barsoum
130	The Presbyterian Church of Australia in the State of NSW
131	Mr Michael Barnett
132	Sue Hetherington
133	Milton Caine
134	Sam Ekermawi

No.	Author
135	Wagga Women's Health Centre Inc.
136	The Reverend Dr. James Collins
137	Graham Anson
138	Council of Australian Postgraduate Associations (CAPA)
139	AMA NSW
140	Irene Skinner
141	Trans Health Australia
142	Chris Walker
143	NSW Bar Association
144	Church of Scientology Australia
145	Aleana Robins
146	Lynda McGregor
147	Pamela Walker
148	Clare Dwyer
149	Les Kelly
150	Gabrielle Lord
151	Peter Coleman
152	Julia Papisidero
153	David Saar
154	Leonard Lambert
155	Name suppressed
156	HK G
157	Skye Carle
158	Leslee-ann Bezzina
159	Aranka Kovacs
160	Sandy Venter
161	Lijine John
162	Dejan Mejkoski
163	Ruth Allison
164	Susan Perkins
165	Michael Pakes
166	Richard Harvie
167	Marie Gauder
168	Bienne Tam
169	Andrew Bewsher

No.	Author
170	Mrs Julie Simonds
171	George Armstrong
172	Denise Musgrave
173	Suzanne Pfister
174	Ann-Marie
175	Name suppressed
176	Raymond Wadeley
177	Christine Matthews
178	Neville
179	Barry Glasson
180	Rodney Woon
181	Michele Scovell
182	Name suppressed
183	Beverley Brown
184	Name suppressed
185	Jun Li Yang
186	David Campbell
187	Tina Kennedy
188	Helen and Brian McKelleher
189	Name suppressed
190	Confidential
191	Hindu Council of Australia
192	Australian Sikh Association

Appendix Four – Witnesses

23 October 2020

Parliament House, Macquarie Room, Sydney, NSW

Witness	Position and Organisation
Dr Michael Casey	Director, PM Glynn Institute, Australian Catholic University
Professor Michael Quinlan	Dean, School of Law, Sydney University of Notre Dame Australia
Professor A. Keith Thompson	Associate Dean, School of Law, Sydney University of Notre Dame Australia
Dr Bernadette Tobin AO	Director, Plunkett Centre for Ethics, Australian Catholic University
Mr Ghassan Kassisieh	Legal Director, Equality Australia
Mr Jack Whitney	Co-convenor, NSW Gay and Lesbian Rights Lobby
Dr Cristyn Davies	Board Director, Twenty10
Mr Terence Humphreys	Co-Executive Director, Twenty10
Rev Simon Hansford	Moderator, Uniting Church Synod of NSW and ACT
Mr Mark Franklin	Director, Multicultural Communities Council of NSW
Mr Peter Wertheim AM	Co-Chief Executive Officer, Executive Council of Australian Jewry and Former President, NSW Jewish Board of Deputies
Professor Simon Rice OAM	Member, Australian Discrimination Law Experts Group
Mr Jonathan Hunyor	Chief Executive Officer, Public Interest Advocacy Centre
Dr Lesley Lynch	Convenor, Human Rights Action Group, NSW Council for Civil Liberties
Mr John Steenhof	Principal Lawyer, Human Rights Law Alliance
Mr Christopher Brohier	Legal Counsel, Australian Christian Lobby
Mr Mark Sneddon	Executive Director, Institute for Civil Society

5 November 2020

Parliament House, Macquarie Room, Sydney, NSW

Witness	Position, Organisation
Dr Mary O'Sullivan	NSW Executive Committee Member, Women's Electoral Lobby
Ms Hayley Foster	Chief Executive Officer, Women's Safety NSW
Ms Kellie McDonald	Senior Solicitor, Women's Legal Services
Dr Rateb Jneid	President, Australian Federation of Islamic Councils
Mr Keysar Trad	Chief Executive Officer, Australian Federation of Islamic Councils
Ms Maha Abdo OAM	Chief Executive Officer, Muslim Women Australia
Mr Bilal Rauf	Spokesperson and Advisor, Australian National Imams Council
Dr Peter Stuart	Bishop, Anglican Diocese of Newcastle
Ms Elise Christian	Advocacy Taskforce Spokesperson, Equal Voices
Bhante Akālika Bhikkhu	Director, Buddhist Council of NSW Spiritual Adviser, Rainbodhi LGBTQIA+ Buddhist Community
Mr Geoff Newcombe AM	Chief Executive, The Association of Independent Schools
Prof. John Whitehall	National Chair, Christian Medical and Dental Fellowship of Australia
Dr Patrick Quirk	Associate Professor, St Thomas More Law School, Australian Catholic University
Dr Vijay Roach	President, Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG)
Ms Julie Hamblin	Board Director, Royal Australian and New Zealand College of Obstetricians and Gynaecologists (RANZCOG)
Dr Justin Koonin	President, ACON

Mr Brent Mackie Associate Director, ACON

Friday, 6 November 2020
Macquarie Room, Parliament House

Witness	Position, Organisation
Archbishop Anthony Fisher	Archbishop of Sydney, Catholic Archdiocese of Sydney
Archbishop Haigazoun Najarian	Primate of the Diocese of the Armenian Church of Australia and New Zealand, Armenian Apostolic Church of Holy Resurrection
Ms Maria Nawaz	Deputy Chair, Human Rights Committee Law Society of NSW
Ms Dianne Anagnos	Principal Solicitor, Kingsford Legal Centre
Archbishop Glenn Davies	Archbishop of Sydney, Anglican Church Diocese of Sydney
Bishop Michael Stead	Bishop of South Sydney, Anglican Church Diocese of Sydney
Associate Professor Neil Foster	Board Member, Freedom for Faith
Rev Dr John McClean	Convenor, Gospel, Society and Culture Committee, Presbyterian Church of Australia in the State of NSW
Ms Sheryl Sarkoezy	Researcher, Gospel, Society and Culture Committee, Presbyterian Church of Australia in the State of NSW
Rev Dr Steve Bartlett	Director of Ministries, Baptist Association of NSW and ACT
Ms Lisa Annese	Chief Executive Officer, Diversity Council Australia
Ms Karla Dunbar	Governance, Policy and Research Officer, Diversity Council Australia

Friday, 16 November 2020
Jubilee Room, Parliament House

Witness	Position, Organisation
Dr Annabelle Bennett AC SC	President, Anti-Discrimination NSW

Ms Catherine Lourey	Mental Health Commissioner, Mental Health Commission of NSW
Mr Paul McKnight	Acting Deputy Secretary, Law and Reform and Legal Services, Department of Communities and Justice
Mr Stephen Bray	Director, Civil Justice, Vulnerable Communities and Inclusion, Policy, Reform and Legislation, Department of Communities and Justice
Mr Milomir Andjelkovic	Adviser to Bishop Siluan, Bishop of the Metropolitanate of Australia and New Zealand, Serbian Orthodox Church
Dr Con Kafataris	President and Founder, Australian Christian Alliance
Dr Patrick Quirk	Associate Professor, St Thomas More Law School, Australian Catholic University
Mr Mahmud Hawila	Adviser, Lebanese Muslim Association
Mr Surinder Jain	National Vice-President and Director, Hindu Council of Australia
Mr Gangandeep Singh	Assistant Company Secretary, Australian Sikh Association
Mr Narinder Singh	Assistant Treasurer, Australian Sikh Association

Appendix Five – Minutes

MINUTES OF MEETING No 1

4:30 pm, Thursday 2 July 2020

Room 814/815, Webex videoconference, and teleconference

Members present in 814/815

The Hon. Gabrielle Upton MP (Chair), Mr Paul Lynch MP (Deputy Chair), the Hon. Scott Farlow MLC, the Hon. Mark Latham MLC, Ms Tania Mihailuk MP.

Members present via Webex videoconference

The Hon. Catherine Cusack MLC, the Hon. Sam Farraway MLC, Mr Alex Greenwich MP, Ms Jenny Leong MP, Dr Joe McGirr MP, Ms Robyn Preston MP, Mr Gurmeh Singh MP.

Members present via teleconference

The Hon. Greg Donnelly MLC.

Officers in attendance

Mr Jonathan Elliott, Ms Elaine Schofield, Mr Ben Foxe, Ms Madeleine Dowd, Ms Jacqueline Linnane, Ms Jacqueline Isles, Ms Mohini Mehta.

1. Apologies

2. Appointment of Committee

The Chair opened the meeting and read the following extracts from the Legislative Assembly Votes and Proceedings:

Legislative Assembly Votes and Proceedings no 56, 18 June 2020, entry no 10:

JOINT SELECT COMMITTEE ON THE ANTI-DISCRIMINATION AMENDMENT (RELIGIOUS FREEDOMS AND EQUALITY) BILL 2020

Mr Mark Speakman moved, by leave, That:

(1) A Joint Select Committee, to be known as the Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020, be appointed.

(2) That the Committee inquire and report into the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020, including whether the objectives of the bill are valid and (if so) whether the terms of the bill are appropriate for securing its objectives.

(3) That the Committee, in undertaking (2), have regard to:

(a) Existing rights and legal protections contained in the Anti-Discrimination Act 1977 (NSW) and other relevant NSW and Commonwealth legislation;

(b) The recommendations relevant to NSW from the Expert Panel Report: Religious Freedom Review (2018);

(c) The interaction between Commonwealth and NSW anti-discrimination laws and the desirability of consistency between those laws, including consideration of:

(i) The draft Religious Discrimination Bill 2019 (Cth) which has been released for public consultation, and

(ii) The Australian Law Reform Commission's reference into the Framework of Religious Exemptions in Anti-discrimination Legislation.

(4) The Committee will consult with key stakeholders as required.

(5) The Committee to consist of:

(a) Eight members of the Legislative Assembly as follows:

(i) Three Government members, namely Hon Gabrielle Upton MP (as Chair), Robyn Preston MP and Gurmeh Singh MP,

(ii) Two Opposition members, namely Paul Lynch MP (as Deputy Chair) and Tania Mihailuk MP, and

(iii) Three cross-bench members, namely Alex Greenwich MP, Jenny Leong MP and Joe McGirr MP, and

(b) Six members of the Legislative Council, namely three Government members, two Opposition members, and one cross-bench member.

(6) That at any meeting of the Committee, seven members, including at least one member of the Legislative Assembly and at least one member of the Legislative Council, shall constitute a quorum.

(7) The Committee have leave to make visits of inspection within the State of New South Wales.

(8) The Committee report by 31 March 2021.

(9) A message be sent to the Legislative Council requesting the Legislative Council agree to the resolution, nominate six of its members to the proposed Committee, and to fix a time and place for the first meeting.

Debate ensued.

Question put and passed.

EXTRACT FROM VOTES AND PROCEEDINGS NO 56
THURSDAY 18 JUNE 2020, ENTRY 20

20 MESSAGE FROM THE LEGISLATIVE COUNCIL—JOINT SELECT COMMITTEE ON THE ANTI-DISCRIMINATION AMENDMENT (RELIGIOUS FREEDOMS AND EQUALITY) BILL 2020

The Speaker reported the following message from the Legislative Council: Mr SPEAKER

The Legislative Council desires to inform the Legislative Assembly that it has this day agreed to the following resolution:

(1) That this House agrees to the resolution in the Legislative Assembly's message of Thursday 18 June 2020 relating to the appointment of a Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020.

(2) That the representatives of the Legislative Council on the Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 be the Honourable Catherine Cusack MLC, the Honourable Scott Farlow MLC, the Honourable Sam Farraway MLC, the Honourable Greg Donnelly MLC, the Honourable Shaoquett Moselmane and the Hon Mark Latham MLC.

(3) That the time and place for the first meeting be advised once it has been determined.

*Legislative Council
18 June 2020*

*JOHN AJAKA
President*

3. Staffing arrangements

The Chair informed Members of the staffing arrangements to support the Committee.

4. Standard procedural motions

Resolved, on the motion of Ms Mihailuk:

1. That if the Committee is meeting and a division or quorum is called in either House, the meeting will be suspended until the Committee regains its quorum.
2. That draft reports, evidence, transcripts, submissions and other Committee documents are not to be disclosed or published by a Committee member or any other person unless authorised by the Committee or the House.
3. That media statements on behalf of the Committee can only be made by the Chair.
4. That the Chair and Committee Director seek the Speaker's approval, through the Clerk of the Legislative Assembly, for funding of visits of inspection, consultancies and other Committee expenses.
That all Committee expenditure comply with Legislative Assembly policies.
5. That the Chair oversight the Committee staff arranging the advertising of the inquiry, contacting interested parties requesting submissions, calling witnesses, and arranging visits of inspection, in accordance with the decisions of the Committee on the conduct of the inquiry.
6. That witnesses appearing before the Committee will not be represented by a legal professional or other advocate unless authorised by the Committee.

5. Inquiry Management

5.1 Timeline for inquiry activity

The Committee noted the proposed timeline circulated by the Chair.

5.2 Submissions to the inquiry

The Chair referred Members to the revised proposal for receiving and managing submissions (previously circulated to Members).

5.2.1 Closing date, online questionnaire and invitation to nominated stakeholders

The Committee discussed the proposed resolution as circulated to members:

- That the closing date for submissions be 21 August 2020.
- That the Committee accept submissions from nominated stakeholders and organisations/experts in the field who apply to make a submission and are approved by the Chair.
- That the Committee not issue an open call for submissions to be lodged through its website portal.
- That the Committee not accept any pro-forma submissions.
- That the Committee use an online questionnaire form to close on the same date as submissions.
- That the wording for the website be as follows:
 - Submissions
 - Individuals are invited to submit their comments on the bill here [hyperlink to online form]. This is a new way for individuals to participate in inquiries and it means we will no longer accept pro-forma submissions.
 - If you or your organisation has specialist knowledge, expertise or experience in the field and you would like to make a more detailed submission, please contact the secretariat, noting the closing date for submissions is 21 August 2020.

Agreed, on the proposal of Mr Donnelly: That the words ‘and are approved by the Chair’ be removed from the second closed dot point.

Mr Latham moved:

That a third open dot point under the sixth closed dot point be added: ‘That in calling for submissions stakeholders and the general public be informed that the Terms of Reference provide for inquiry into the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020, not other Parts of the Anti-Discrimination Act 1977.’

Agreed, on the proposal of Mr Farlow: That the following words be added to the proposed amendment of Mr Latham: ‘Attention is also drawn to point (3) of the Terms of Reference.’

Discussion ensued.

Question put on Mr Latham's amendment, as amended.

Ayes: Ms Cusack, Mr Donnelly, Mr Farlow, Mr Farraway, Mr Latham, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton.

Noes: Mr Greenwich, Ms Leong, Mr Lynch.

Question resolved in the affirmative.

Mr Latham's amendment, as amended, agreed to.

Resolved, on the motion of Ms Mihailuk:

- That the closing date for submissions be 21 August 2020.
- That the Committee accept submissions from nominated stakeholders and organisations/experts in the field who apply to make a submission.
- That the Committee not issue an open call for submissions to be lodged through its website portal.

- That the Committee not accept any pro-forma submissions.
- That the Committee use an online questionnaire form to close on the same date as submissions.
- That the wording for the website be as follows:

Submissions

- Individuals are invited to submit their comments on the bill here [hyperlink to online form]. This is a new way for individuals to participate in inquiries and it means we will no longer accept pro-forma submissions.
- If you or your organisation has specialist knowledge, expertise or experience in the field and you would like to make a more detailed submission, please contact the secretariat, noting the closing date for submissions is 21 August 2020.
- That in calling for submissions stakeholders and the general public be informed that the Terms of Reference provide for inquiry into the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020, not other Parts of the Anti-Discrimination Act 1977. Attention is also drawn to point (3) of the Terms of Reference.

5.2.2. Online submission form questions

The Committee discussed the proposed resolution as circulated to members:

That the questions for the online questionnaire form be as follows:

- Demographics: Name, Email address and postcode
- What is your position on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020? elect one of these options: support, oppose, neutral/undecided
- In relation to the previous question, please explain your position on the bill (500 word text box)
- Do you have any other comments on the bill? (250 word text box)

Agreed, on the proposal of Mr Latham: That a fourth option be added to the options listed under the second closed dot point: 'support with amendments'.

Resolved, on the motion of Mr Singh: That the third closed dot point be amended to replace '500' with '750', and that the fourth closed dot point be removed.

Resolved, on the motion of Mr Donnelly:

That the questions for the online questionnaire form be as follows:

- Demographics: Name, Email address and postcode
- What is your position on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020? elect one of these options: support, support with amendments, oppose, neutral/undecided
- In relation to the previous question, please explain your position on the bill (750 word text box)

Ms Leong left the meeting at 5:49 pm.

5.2.3 Preparation of Summary report

The Committee discussed the proposed resolution as circulated to members:

- That the secretariat prepare a summary report of responses on the online submission form for publication on the website and use in the report, and
- That individual on-line responses be kept confidential to the Committee.

Agreed, on the proposal of Mr Donnelly: That the word survey be inserted before the word online in the first and second closed dot point, and that the word individual be removed from the second closed dot point.

Resolved, on the motion of Mr Lynch:

- That the secretariat prepare a summary report of responses on the survey online submission form for publication on the website and use in the report, and
- That survey on-line responses be kept confidential to the Committee.

5.2.4 Submission invitations

Resolved, on the motion of Mr Lynch: That the nominated stakeholders be invited to make a submission, and members be given seven days to nominate additional stakeholders. (The list of nominated stakeholders circulated for meeting no. 1 are attached as Attachment 1 to the Minutes of Meeting no. 1).

5.3 Briefings for members

The Committee agreed that the Chair explore options for briefings to the Committee prior to the hearings, and also explore the potential for a citizens' jury-type process in relation to the inquiry.

6. Next meeting

The Committee adjourned at 6.09 pm until a date to be determined.

Minutes Attachment 1 – Meeting No. 1 – 2 July 2020

Inquiry Stakeholders

Government

- Minister Mark Speakman, Attorney General
- Anti Discrimination Board of NSW
- Australian Human Rights Commission

Legal groups

- Law Society of New South Wales
- Muslim Legal Network (NSW)
- New South Wales Bar Association
- NSW Young Lawyers Human Rights Committee
- Redfern Legal Centre
- Inner City Legal Centre

Religious groups/churches

- Anglicare Sydney
- Australia/Israel and Jewish Affairs Council
- Australian National Imams Council (NSW)
- Australian Sangha Association

- Australian Sikh Association
- Baptist Churches of NSW and ACT
- Buddhist Council of New South Wales
- Catholic Archdiocese of Sydney
- Catholic Women's League Australia - NSW
- Coptic Orthodox Church - Diocese of Sydney
- Greek Orthodox Archdiocesan District of Sydney
- Islamic Council of New South Wales
- Lutheran Church of Australia - NSW District
- National Council of Priests of Australia (NSW)
- New South Wales Jewish Board of Deputies
- NSW Council of Churches
- NSW Ecumenical Council
- Presbyterian Church of Australia in the State of NSW
- Uniting Church In Australia, Synod of NSW and ACT

Community and advocacy groups

- ACON NSW
- Amnesty International Australia - NSW Branch
- Association of Independent Schools of NSW
- Australian Christian Lobby
- Australian GLBTIQ Multicultural Council
- Australian Hellenic Council (NSW)
- Australian Lawyers for Human Rights
- Catholic Education Commission, NSW / Catholic Schools NSW
- Catholic Healthcare Australia
- ClubsNSW
- Democracy In Colour
- Diversity Council Australia
- Dying With Dignity NSW
- Equal Voices (NSW)
- Equality Rights Alliance
- Family Planning NSW
- FamilyVoice Australia (NSW)
- Greek Orthodox Community of NSW
- Harmony Alliance
- Human Rights Law Centre
- Humanist Society of New South Wales
- Institute for Civil Society
- Intersex Human Rights Australia
- Justice Connect NSW
- Kingsford Legal Centre
- Life Without Barriers
- Mental Health Commission of NSW
- NSW Council for Civil Liberties

- NSW Council of Social Service
- NSW Gay and Lesbian Rights Lobby
- PFLAG - NSW
- Rainbow Families NSW
- Rationalist Association of NSW
- Tibetan Community of Australia NSW
- United Muslims of New South Wales
- Unveiled Institute
- Vietnamese Community in Australia NSW Chapter
- Women's Electoral Lobby - NSW
- Women's Health NSW
- Women's Legal Service NSW

Unions/peak industry bodies

- Australian Medical Association (NSW)
- Unions NSW

Research

- Australian Discrimination Law Experts Group (ADLEG) (NSW members)
 - Professor Beth Goldblatt (UTS)
 - Ms Rosemary Kayess (UNSW)
 - Professor Therese MacDermott (MQU)
 - A/Prof Karen O'Connell (UTS)
 - Dr Alice Orchiston (UNSW)
 - Professor Simon Rice (USyd)
 - A/Prof Belinda Smith (USyd)
- Innovative Research Universities
- The Hon. Michael Kirby

MINUTES OF MEETING No 2

12:36 pm, Monday 31 August 2020

Macquarie Room, Webex videoconference, and teleconference

Members present in the Macquarie Room

The Hon. Gabrielle Upton MP (Chair), Mr Paul Lynch MP (Deputy Chair), Mr Jihad Dib MP, the Hon. Greg Donnelly MLC, the Hon. Scott Farlow MLC, Mr Alex Greenwich MP, the Hon. Mark Latham MLC, Ms Jenny Leong MP, Dr Joe McGirr MP, Ms Tania Mihailuk MP, Ms Robyn Preston MP.

Members present via Webex videoconference

The Hon. Catherine Cusack MLC.

Members present via teleconference

The Hon. Sam Faraway MLC and Mr Gurmesh Singh MP.

Officers in attendance

Mr Jonathan Elliott, Ms Elaine Schofield, Mr Ben Foxe, Ms Caroline Hopley, Ms Cheryl Samuels, Ms Jacqueline Isles, Ms Mohini Mehta.

1. Apologies

2. Confirmation of minutes

Resolved, on the motion of Mr Donnelly, seconded by Mr Greenwich: That the minutes of the meeting of 2 July 2020 be confirmed.

3. Membership

The Chair reported that the Hon. Shaoquett Moselmane MLC had been discharged from the Committee and Mr Jihad Dib MP had been appointed to the Committee. The Chair also reported that the Houses had amended the resolution establishing the Joint Select Committee to provide for the membership of the Committee to now consist of nine members of the Legislative Assembly, and five members of the Legislative Council.

Resolved, on the motion of Dr McGirr, seconded by Ms Mihailuk: That the Committee note the amendment to the resolution establishing the Joint Select Committee, and the appointment of Mr Jihad Dib MP.

Mr Lynch joined the meeting at 12:38 pm.

4. Correspondence

Sent:

- a) Chair to the Hon. Philip Ruddock AO, requesting a briefing to the Committee, dated 9 July 2020.
- b) Chair to the Hon. Mark Speakman SC MP, Attorney General and Minister for the Prevention of Domestic Violence, requesting a briefing to the Committee, dated 9 July 2020.

Received:

- a) Ms Edwina Aubin, Christian Science Committee on Publication for Northern-Eastern Australia, responding to the invitation to make a submission and declining to make a submission, dated 15 July 2020.
- b) Mr Edward Santow, Human Rights Commissioner, Australian Human Rights Commission, responding to the invitation to make a submission, declining to make a submission but advising that the Commission will assist the NSW Anti-Discrimination Board with its submission, dated 15 July 2020.
- c) Mr Greg Bondar, NSW/ACT State Director, FamilyVoice Australia, requesting an opportunity to appear before the Committee, dated 27 July 2020.
- d) Mr Michael Coutts-Trotter, Secretary, Department of Communities and Justice, confirming details for the briefing to the Committee on 31 August 2020, dated 27 July 2020.

Resolved, on the motion of Ms Mihailuk, seconded by Mr Greenwich: That the Committee note the correspondence, and that the Secretariat respond to Mr Bondar with advice that the Committee has noted his request.

5. Submissions

The Chair reported that submissions had closed on 21 August 2020, and that submissions were being processed by the Secretariat. The Chair also provided for the information of members a list of stakeholders invited to make a submissions to the inquiry, incorporating those nominated by members.

The Chair also reported that the online survey form had received 19,502 responses, and that a report on the results would be prepared by the Secretariat and provided to members.

6. Briefings to the Committee

Resolved, on the motion of Mr Farlow, seconded by Ms Preston:

- a) That the Committee invite the Hon. Philip Ruddock AO to brief the Committee in private following the conclusion of this deliberative meeting.
- b) That the Committee invite Mr Paul McKnight, Acting Deputy Secretary, Law Reform and Legal Services, and Mr Stephen Bray, Director, Civil Justice, Vulnerable Communities and Inclusion, Department of Communities and Justice, to brief the Committee in private at 2:30 pm, 31 August 2020.
- c) That the Committee note the background issues paper on the bill prepared by the Secretariat staff for the information of members.

Ms Cusack joined the meeting at 12:42 pm.

7. General business

The Chair reported to the Committee on the possible use of a citizen's jury process. The Chair advised that the use of the process was not feasible for this inquiry.

8. Briefings

The Chair adjourned the deliberative meeting at 12:45 pm.

Pursuant to the Committee's earlier resolution, the Hon. Philip Ruddock entered the room at 12:45 pm and provided a briefing about the work of the Expert Panel on the Religious Freedom Review.

The Chair adjourned the briefing at 2 pm.

Pursuant to the Committee's earlier resolution, Mr Paul McKnight, Acting Deputy Secretary, Law Reform and Legal Services, and Mr Stephen Bray, Director, Civil Justice, Vulnerable Communities and Inclusion, Department of Communities and Justice, entered the room at 2:30 pm and provided a briefing on anti-discrimination law in New South Wales.

9. Next meeting

The Chair adjourned the briefing at 4:30. The next meeting will be on 21 September 2020.

MINUTES OF MEETING No 3

12:08 pm, Monday 21 September 2020

Preston Stanley Room and Webex videoconference

Members present in the Preston Stanley Room

The Hon. Gabrielle Upton MP (Chair), Mr Paul Lynch MP (Deputy Chair), the Hon. Catherine Cusack MLC, Mr Jihad Dib MP, the Hon. Greg Donnelly MLC, the Hon. Scott Farlow MLC, the Hon. Sam Farrow MLC, Mr Alex Greenwich MP, the Hon. Mark Latham MLC, Ms Jenny Leong MP, Ms Tania Mihailuk MP, Ms Robyn Preston MP, Mr Gurmesh Singh MP.

Members present via Webex videoconference

Dr Joe McGirr MP.

Officers in attendance

Mr Jonathan Elliott, Ms Elaine Schofield, Mr Ben Foxe, Ms Caroline Hopley, Ms Jacqueline Isles (via Webex), Ms Mohini Mehta (via Webex).

1. Apologies**2. Confirmation of minutes**

Resolved, on the motion of Mr Greenwich: That the minutes of the meeting of 31 August 2020 be confirmed.

Mr Latham requested that notes of the private briefings held on 31 August be circulated to Members. The Committee agreed that the Secretariat would circulate a document outlining in further detail the private briefing by the Department of Communities and Justice held on 31 August 2020.

3. Correspondence**3.1 Sent**

- c) Email to Mr Greg Bondar, NSW/ACT State Director, FamilyVoice Australia, from the Secretariat, advising that the Committee has noted Mr Bondar's request to appear before the Committee, sent 2 September 2020.
- d) Letter to the Hon. Philip Ruddock AO, conveying appreciation for the briefing provided to the Committee, sent 3 September 2020.
- e) Letter to Mr Michael Coutts-Trotter, Secretary, Department of Communities and Justice, conveying appreciation for the briefing provided to the Committee by Department representatives, sent 3 September 2020.

3.2 Received

- e) Email from Mr Peter Wertheim, co-Chief Executive Officer, Executive Council of Australian Jewry, advising that the Council will not make a submission, but will assist the NSW Jewish Board of Deputies in the preparation of the Board's submission, email dated 11 August 2020, received 1 September 2020.
- f) Email from Ms Kathryn Di Nicola, Acting Head of Policy and Advocacy, Mission Australia, advising that Mission Australia will not make a submission to the inquiry, received 19 August 2020.
- g) Email from Mr David Tricca, Adviser, Office of the Hon. Natalie Ward MLC, advising that Ms Ward supports Mr Adam Johnston (author of submission 11) being considered as a witness, received 19 August 2020.
- h) Emailed letter from Mr Brian Houston, Global Senior Pastor, Hillsong Church, advising that Hillsong Church endorses the submission lodged by Freedom for Faith, received 21 August 2020.

- i) Email from Ms Emma Cherrington, Research Officer, Anti-Discrimination NSW, seeking the Committee's authorisation for Anti-Discrimination NSW to publish its submission on its website, received 26 August 2020.

Resolved, on the motion of Ms Leong: That the Committee note the correspondence.

Resolved, on the motion of Mr Latham: That the Committee not authorise the re-publication of the Anti-Discrimination NSW submission on the Anti-Discrimination NSW website; that the Secretariat advise Anti-Discrimination NSW of the Committee's decision; and that the Secretariat advise that a link to the submission as published on the Committee's website can be used as an alternative.

The Chair noted that Mr Milton Caine, author of Submission 133, had provided an updated version of his submission for the Committee's consideration on 16 September, and that Mr Caine's correspondence and his updated submission had been circulated to Members prior to the meeting.

Resolved, on the motion of Mr Farlow: That the Committee note Mr Caine's correspondence, and treat the updated version of the document provided by Mr Caine as his submission for the Committee to consider.

4. Unauthorised disclosure of submissions

The Chair referred to her email to Members of 7 September 2020 regarding the 6 September 2020 Sun Herald article titled "Sydney Anglicans, religious schools declare support for Latham discrimination bill". Discussion ensued.

Ms Mihailuk entered the meeting at 12:20 pm.

Resolved, on the motion of Mr Greenwich: That the Committee considers the unauthorised disclosure of submissions to be a serious matter; but not one which has substantially impeded it in carrying out its functions. In order to maintain confidence in the ongoing proceedings of the inquiry, the Committee directs the Chair write to all Committee Members and Committee staff who had authorised access to the submissions asking them to provide a written assurance that they have at no time disclosed its contents to any external third parties (outside of parliamentary staff) and have no knowledge of the source of the disclosure or how it occurred.

5. Submissions to the inquiry

5.1 Submissions proposed to be accepted

The Chair noted that submissions 1 to 143 had been provided to Members prior to the meeting.

The Chair advised that an updated submission had been provided on 21 September by Dr Carolyn Tan, Chair of the Public Affairs Commission of the Anglican Church of Australia (submission 39) for the Committee's consideration. The updated submission 39 and Dr Tan's correspondence was circulated at the meeting.

Resolved, on the motion of Mr Farlow: That the Committee note the correspondence from the Public Affairs Commission of the Anglican Church of Australia, and treat the updated submission of the Commission as their submission for the consideration of the Committee.

The Chair further advised that an additional submission, numbered 144, had been received and had been circulated by email to Members prior to the meeting. Discussion ensued.

Resolved, on the motion of Mr Donnelly: That the Committee authorise publication in full of submissions 1-2, 4-26, 29-93, 95-100, 102-105, 107-109, 111-113, 115, 117-127, 129-130, and 132-143.

Resolved, on the motion of Mr Greenwich: That the Committee authorise the partial publication, with the name suppressed, of submission 94, as requested by the author.

The Committee discussed the proposed resolution as circulated to Members: That the Committee authorise the partial publication of submission 106 with details of an alleged instance of discrimination omitted, submission 110 with names of organisations and individuals regarding instances of alleged discrimination omitted, and submission 116 with the last sentence of part 4.1, the last sentence of part 4.2, all of part 5, all of part 6, and all of Appendix A omitted, along with references to this content elsewhere in the submission.

Discussion ensued.

Resolved, on the motion of Mr Greenwich: That submissions 106, 110 and 116 not be published, and that the Committee defers consideration of the publication of submissions 106, 110 and 116 pending further advice of the Committee Secretariat on redactions.

The Committee discussed the proposed resolution as circulated to Members: That submissions 3, 27, 28, 101, 114, 128 and 131 remain confidential to Committee Members and are not to be published.

Discussion ensued.

Resolved on the motion of Mr Faraway: That the Secretariat write to the author of submission 28, advising that the Committee prefers to publish the submission and enquiring whether the author wishes to withdraw the submission or resubmit it.

Resolved on the motion of Mr Greenwich: That submission 131 not be published, and that the Committee defers consideration of the publication of submission 131 pending further advice of the Committee Secretariat.

Resolved on the motion of Mr Faraway: That submissions 3, 27, 101, 114, and 128 remain confidential to Committee Members and are not to be published.

Resolved, on the motion of Mr Farlow: That the Committee authorise the partial publication of submission 144, with the last two paragraphs on page 12 and the first paragraph on page 13 omitted.

5.2 Submissions proposed not to be accepted

The Chair referred to the following emails received, and circulated prior to the meeting:

- a) Email from Mr John Szilard, received 12 August 2020
- b) Email from Mr William Summers, Marketing and Media Advisor, Innovative Research Universities, received 24 August 2020
- c) Email from Dr Paul Morrissey, President, Campion College Australia, received 18 August 2020
- d) Email from Ms Marina Stefanov, received 31 July 2020
- e) Email from Mr Ian Franks, received 21 August 2020

Resolved, on the motion of Ms Cusack:

- a) That the correspondence from Mr Szilard and Innovative Research Universities be retained with the records of the inquiry and not be published, as they have forwarded submissions made regarding the Commonwealth draft legislation;
- b) That the submission of Mr Morrissey be retained with the records of the inquiry and not be published, as the attachment has been published elsewhere;
- c) That the correspondence from Ms Stefanov and Mr Franks be retained with the records of the inquiry and not be published, as they are outside the inquiry terms of reference; and
- d) That the Committee respond to Mr Szilard, Mr Summers, Mr Morrissey, Ms Stefanov and Mr Franks, in order to advise each individual of the Committee's decision.

5.3 Other documents

The Chair advised that 44 pieces of correspondence (supplied to Members and labelled A to QQ) had been received where it was unclear if the authors had intended to make a formal submission or to only provide the Committee with an indication of their support/opposition to the bill. Two further emails had been received which were possible pro-forma submissions (RR and SS).

Resolved, on the motion of Mr Greenwich: That the Committee receive the documents A to SS as submissions, that the Secretariat seek publication preferences from the documents' authors, and that at the next meeting the Secretariat advise the Committee of the relevant publication requests.

6. Online questionnaire

The Chair advised that 19,502 responses had been received on the online questionnaire. The Chair referred to the preliminary report on the results of the question 'what is your position on the bill' of the questionnaire, previously distributed by email for the information of Members.

Resolved, on the motion of Mr Donnelly: That the preliminary report on the results of the question 'what is your position on the bill' on the online questionnaire be published to the Committee's webpage, and that a link to the report be included on the Committee's homepage.

7. Public hearings and witnesses

7.1 Witnesses

The Chair referred to the list of witnesses previously nominated by Members and circulated on 18 September via email to Members for consideration. Discussion ensued regarding possible arrangements for witness panels and the following principles for identifying witnesses:

- a) Maximum of three stakeholders per panel
- b) Panels should share a view on the bill (support/support with amendments/oppose)

- c) Panels should optimally be of the same stakeholder type
- d) Priority should be given to NSW stakeholders
- e) Avoid repetition of identical views
- f) Avoid inviting individuals unless they have specific expertise.

The Committee agreed that the Chair and Committee Secretariat would compile hearing schedules and witness lists using the witnesses nominated by Members and in accordance with the principles discussed at the meeting. The Chair advised that the hearing schedules and witness lists would be circulated for the consideration of the Committee on 25 September.

7.2 Hearing dates

The Chair noted that the following dates had been held in Members' diaries for public hearings: Monday 19 October, Friday 23 October, Thursday 5 November and Friday 6 November.

8. General Business

9. Next meeting

The Chair adjourned the meeting at 2:09 pm. The next meeting will be on Monday 19 October.

MINUTES OF MEETING No 4

1:20 pm, Tuesday 13 October 2020

Macquarie Room and Webex videoconference

Members present

The Hon. Gabrielle Upton MP (Chair), Mr Paul Lynch MP (Deputy Chair), Mr Jihad Dib MP, the Hon. Greg Donnelly MLC, the Hon. Scott Farlow MLC, the Hon. Sam Faraway MLC, Mr Alex Greenwich MP, the Hon. Mark Latham MLC, Ms Jenny Leong MP, Dr Joe McGirr MP, Ms Tania Mihailuk MP, Ms Robyn Preston MP, Mr Gurmesh Singh MP.

Members present via Webex videoconference

The Hon. Catherine Cusack MLC.

Officers in attendance

Mr Jonathan Elliott, Ms Elaine Schofield, Mr Ben Foxe, Ms Caroline Hopley, Ms Jacqueline Isles, Ms Mohini Mehta (via Webex).

1. Apologies

2. Confirmation of minutes

The Committee discussed the proposed resolution as circulated to Members: That the minutes of the meeting of 21 September 2020 be confirmed.

Resolved on the motion of Dr McGirr: That the final sentence of item 2 be omitted in the minutes of the meeting of 21 September 2020, and that the following sentence be inserted: The Committee agreed that the Secretariat would circulate a document outlining in further detail the private briefing by the Department of Communities and Justice held on 31 August 2020.

Resolved on the motion of Mr Donnelly: That the minutes of the meeting of 21 September 2020 as amended be confirmed.

3. Public hearings and witnesses

3.1 Witnesses

Draft hearing schedules had been circulated to Members as an attachment to the agenda (Attachment B). The Chair noted that the actual make up of hearing days and panels would be subject to witness availability, and would likely differ from the draft schedules in the attachment.

Dr McGirr moved:

That the individuals/organisations included in the proposed hearing schedules in Attachment B be invited to appear as witnesses at a public hearing:

Panel 1

- Dr Michael Casey, Director, PM Glynn Institute, ACU
- Professors Michael Quinlan and Keith A Thompson
- Dr Bernadette Tobin, Plunkett Centre for Ethics

Panel 2

- Equality Australia
- NSW Gay and Lesbian Rights Lobby
- Twenty10

Panel 3

- Catholic Bishops of NSW/AMEC
- Archbishop Anthony Fisher
- Dr Patrick Quirk

Panel 4

- Australian Discrimination Law Experts Group
- Public Interest Advocacy Centre
- NSW Council for Civil Liberties

Panel 5

- Anglican Church Diocese of Sydney
- Archbishop Glenn Davies/Sydney Diocese Social Issues Committee
- Freedom for Faith

Panel 6

- Women's Electoral Lobby
- Women's Legal Service
- Women's Safety

Panel 7

- Australian National Imams Council
- Australian Federation of Islamic Councils
- Muslim Women Australia

Panel 8

- Dr Peter Stuart, Anglican Bishop of Newcastle
- Equal Voices
- Buddhist Council of Australia

Panel 9

- Catholic Schools NSW
- The Association of Independent Schools
- Christian Medical and Dental Fellowship of Australia

Panel 10

- RANZCOG
- AMA NSW
- ACON

Panel 11

- Institute for Civil Society
- Australian Christian Lobby
- Human Rights Law Alliance

Panel 12

- NSW Bar Association
- NSW Law Society
- Kingsford Legal Centre

Panel 13

- Uniting Church Synod of NSW and ACT
- Multicultural Communities Council of NSW
- NSW Jewish Board of Deputies

Panel 14

- Gender Centre
- Rainbow Families
- The Rationalist Society

Panel 15

- Business Council of Australia
- Diversity Council of Australia
- Australian Industry Group

Panel 16

- Drs Bruce Arnold (University of Canberra), Wendy Bonython (Bond University) and Richard Matthews (Bond University)
- Muslim Legal Network
- NSW Teachers Federation

Panel 17

- Presbyterian Church of Australia in the State of NSW
- Baptist Association of NSW and ACT
- Lebanese Muslim Association

Panel 18

- Australian Sikh Association
- Mr G Jayaraman, President, Hindu Council of Australia

Panel 19

- Anti-Discrimination NSW
- Department of Communities and Justice
- Mental Health Commission of NSW

Mr Farlow moved, seconded Mr Donnelly: That the hearing schedules be amended to remove panels 14 and 16, and to add a new panel consisting of the following witnesses:

- Archbishop Haigazoun Najarian, Armenian Orthodox Church
- His Grace The Right Reverend Siluan, Bishop of Australia and NZ, The Serbian Orthodox Church
- Monsignor Marcelino, Vicar General, and Father Yuhanna Aziz, Maronite Catholic Church
- Dr Con Kafataris, Australian Christian Alliance.

Mr Greenwich moved, seconded Ms Leong: That Mr Farlow's amendment be amended:

a) to allow for the Gender Centre to be moved from Panel 14 to Panel 10, the Teachers Federation to be moved from Panel 16 to panel 15, the Muslim Legal Network to be moved from Panel 16 to panel 18; and

b) that, should space become available on an appropriate panel, the following witnesses be considered by the Chair for inclusion:

- Family Planning NSW
- Human Rights Law Centre
- Rationalist Society
- Rape and Domestic Violence Services Australia
- Mr George Williams.

Discussion ensued.

Question put on Mr Greenwich's amendment to Mr Farlow's amendment.

Ayes: Ms Cusack, Mr Dib, Mr Greenwich, Ms Leong, Mr Lynch.

Noes: Mr Donnelly, Mr Farlow, Mr Farraway, Mr Latham, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton.

Question resolved in the negative.

Discussion ensued.

Question put on Mr Farlow's amendment.

Ayes: Ms Cusack, Mr Donnelly, Mr Dib, Mr Farlow, Mr Farraway, Mr Latham, Mr Lynch, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton.

Noes: Mr Greenwich, Ms Leong.

Question resolved in the affirmative.

Mr Greenwich moved: That the Gender Centre and the Rationalist Society be invited to appear on an additional panel.

Mr Latham raised a point of order that the Committee had already dealt with this question.

The Chair ruled that the motion was out of order, as the Committee had previously resolved that those stakeholders be removed from the hearing schedules.

Question put on the motion of Dr McGirr, as amended: That the individuals/organisations included in the proposed hearing schedules in Attachment B be invited to appear as witnesses at a public hearing, with panels 14 and 16 removed, and adding a new panel consisting of the following witnesses:

- Archbishop Haigazoun Najarian, Armenian Orthodox Church
- His Grace The Right Reverend Siluan, Bishop of Australia and NZ, The Serbian Orthodox Church
- Monsignor Marcelino, Vicar General, and Father Yuhanna Aziz, Maronite Catholic Church
- Dr Con Kafataris, Australian Christian Alliance.

Ayes: Ms Cusack, Mr Donnelly, Mr Dib, Mr Farlow, Mr Farraway, Mr Latham, Mr Lynch, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton.

Noes: Mr Greenwich, Ms Leong.

Question resolved in the affirmative.

3.2 Hearing dates

The Chair noted that the dates of Monday 19 October, Friday 23 October, Thursday 5 November and Friday 6 November had been held in Members' diaries for possible public hearings.

The Chair proposed that opening statements from witnesses not be provided for, in order to allow more time for questions.

Resolved on the motion of Mr Donnelly, seconded Mr Dib: That the Committee hold public hearings on Friday 23 October, Thursday 5 November, Friday 6 November, and a date to be confirmed.

4. General Business

The Chair advised Members that hearings would be held in the Macquarie Room. She noted that social distancing requirements would mean that witnesses will be placed at the far other end of the room normally used for the public gallery.

The Chair further noted that it would also not be possible to have a public gallery, or have media physically present in the room, due to COVID required room capacity constraints.

The Chair asked that any Member who is planning to attend the hearings via Webex inform the staff as soon as possible, so that this can be taken into consideration for the room set up.

5. Next meeting

The Chair adjourned the meeting at 2:00 pm. The next meeting will be on Friday 23 October 2020.

MINUTES OF MEETING No 5

8:53 am 23 October 2020

Macquarie Room, Parliament House and via Webex videoconference

Members present in the Macquarie Room

The Hon. Gabrielle Upton MP (Chair), Mr Paul Lynch MP (Deputy Chair), Mr Jihad Dib MP, the Hon. Greg Donnelly MLC, the Hon. Scott Farlow MLC, Mr Alex Greenwich MP, the Hon. Mark Latham MLC, Ms Jenny Leong MP, Dr Joe McGirr MP, Ms Tania Mihailuk MP, Ms Robyn Preston MP.

Members present via Webex videoconference

The Hon. Catherine Cusack MLC.

Officers in attendance

Mr Jonathan Elliott, Ms Elaine Schofield, Mr Ben Foxe, Ms Caroline Hopley, Ms Jacqueline Linnane, Ms Jacqueline Isles, Ms Mohini Mehta.

1. Apologies

The Hon. Sam Faraway MLC, and Mr Gurmesh Singh MP.

2. Confirmation of minutes

Resolved, on the motion of Ms Preston: That the minutes of the meeting of 13 October 2020 be confirmed.

3. Written assurances regarding the unauthorised disclosure of submissions

The Chair advised that all Committee Members and Committee staff had returned written acknowledgements that they did not disclose the contents of confidential submissions to external third parties (outside of parliamentary staff) and have no knowledge of the source of the disclosure, or how it occurred.

Resolved, on the motion of Mr Donnelly: That no further action be taken at this time in relation to the unauthorised disclosure of submissions.

4. Procedural resolutions for the public hearing

The Chair outlined the process for the asking of questions by Members during the hearing.

Resolved, on the motion of Mr Donnelly:

- a) That the Committee authorises the audio-visual recording, photography, and broadcasting of the public hearing on 23 October 2020 in accordance with the Legislative Assembly's guidelines for coverage of proceedings for Parliamentary Committees administered by the Legislative Assembly.
- b) That the corrected transcript of public evidence given on 23 October 2020 be authorised for publication and uploaded on the Committee's website.
- c) That witnesses be requested to return answers to questions taken on notice within 1 week of the date on which the questions and a copy of their Hansard transcript are forwarded to the witnesses, and that once received, answers be published on the Committee's website.
- d) That any documents tendered during the public hearing be considered by the Committee for publication at a deliberative meeting following the public hearing.

The Chair adjourned the deliberative meeting at 9:00 am.

5. Public hearing

The Chair opened the public hearing at 9:00 am.

The following witnesses were admitted and examined in person:

Dr Michael Casey, Director, PM Glynn Institute, Australian Catholic University, sworn and examined.

Professor Michael Quinlan, Dean, School of Law, Sydney University of Notre Dame Australia, sworn and examined.

Professor A. Keith Thompson, Associate Dean, School of Law, Sydney University of Notre Dame Australia, sworn and examined.

Dr Bernadette Tobin AO, Director, Plunkett Centre for Ethics, Australian Catholic University, sworn and examined.

Evidence completed, the witnesses withdrew.

At 10:30 am the following witnesses were admitted and examined in person:

Dr Cristyn Davies, Board Director, Twenty10, affirmed and examined.

Mr Terence Humphreys, Co Executive Director, Twenty10, affirmed and examined.

Mr Ghassan Kassisieh, Legal Director, Equality Australia, affirmed and examined.

Mr Jack Whitney, Co-convenor, NSW Gay and Lesbian Rights Lobby, affirmed and examined.

Mr Kassisieh foreshadowed that he would provide and table a joint statement signed by more than 80 organisations regarding the bill.

Evidence completed, the witnesses withdrew.

At 11:52 am, the Committee adjourned the public hearing to deliberate in private.

The Committee deliberated on the sending of additional questions to witnesses.

Resolved, on the motion of Mr Greenwich: That Members may submit additional questions to witnesses following public hearings of the Committee three days after having received the corrected Hansard transcript, and the witnesses have seven days in which to submit their answers to those questions, with the possibility of extension in extenuating circumstances.

At 11:58 am deliberations concluded.

The public hearing resumed.

At 11:58 am the following witnesses were admitted and examined in person:

Reverend Simon Hansford, Moderator, Uniting Church Synod of NSW and ACT, sworn and examined.

Mr Mark Franklin, Director, Multicultural Communities Council of NSW, affirmed and examined.

Mr Peter Wertheim AM, Co-Chief Executive Officer, Executive Council of Australian Jewry and Former President of the NSW Jewish Board of Deputies, sworn and examined.

Evidence completed, the witnesses withdrew.

At 2:00 pm the following witnesses were admitted and examined in person:

Mr Jonathon Hunyor, Chief Executive Officer, Public Interest Advocacy Centre, affirmed and examined.

Dr Lesley Lynch, Convenor, Human Rights Action Group, NSW Council for Civil Liberties, affirmed and examined.

Professor Simon Rice OAM, Member, Australian Discrimination Law Experts Group, affirmed and examined.

Evidence completed, the witnesses withdrew.

At 3:15 pm, the Committee adjourned the public hearing to deliberate in private.

Resolved, on the motion of Mr Farlow: That the name and identifying details of the author of Submission 190 be redacted from the transcript of evidence, that the media not report on the comments made, and for members of the public not to repeat them.

At 3:22 pm, deliberations concluded, the Chair adjourned the deliberative meeting, with the next witnesses to be admitted at 3:30 pm.

At 3:30 pm the public hearing resumed.

The Chair made a statement in regards to the publication of the transcript following the earlier resolution of the Committee.

The following witnesses were examined by videoconference:

Mr Christopher Brohier, Legal Counsel, Australian Christian Lobby, sworn and examined.

Mr Mark Sneddon, Executive Director, Institute for Civil Society, sworn and examined.

Mr John Steenhof, Principal Lawyer, Human Rights Law Alliance, sworn and examined.

During his evidence Mr Sneddon made a request to provide a further submission to the Committee. The Chair advised that the request would be considered at a deliberative meeting.

Evidence completed, the witnesses withdrew.

At 4:54 pm the Chair closed the public hearing, and the Committee resumed the deliberative meeting.

6. Correspondence

6.1 Sent

- a) Email to Ms Zoe Lindegger, Senior Project Adviser, Mental Health Commission, advising that the Committee's preference is to publish the Commission's submission, and confirming whether the Commission wishes to withdraw the submission or resubmit it, sent 25 September 2020.
- b) Email to Ms Katherine Nelson, Research Officer, Anti-Discrimination NSW, advising the Committee had resolved not to authorise republication of the Anti-Discrimination NSW submission, sent 25 September 2020.
- c) Email to Mr John Szilard, advising that the Committee had resolved to not publish the author's submission regarding the Commonwealth Religious Discrimination Bill 2019, sent 1 October 2020.
- d) Email to Mr William Summers, advising that the Committee had resolved to not publish the Innovative Research Universities submission regarding the Commonwealth Religious Discrimination Bill 2019, sent 1 October 2020.
- e) Email to Dr Paul Morrissey, advising that the Committee had resolved to not publish the document provided in correspondence, sent 1 October 2020.
- f) Email to Ms Marina Stefanov advising that the Committee had resolved to not publish their correspondence, sent 1 October 2020.
- g) Email to Mr Ian Franks, advising that the Committee had resolved to not publish their correspondence, sent 1 October 2020.

6.2 Received

- a) Email from Ms Hooma Mishra, Principal Legal Adviser and Manager, Mental Health Commission, advising that the previous Mental Health Commission submission will be withdrawn, and providing an updated submission from the Commission, received 25 September 2020.
- b) Letter from Ms Clover Moore, Lord Mayor of the City of Sydney, to the Committee Chair, advising of the City's concerns regarding the bill, received 2 October 2020.

Resolved, on the motion of Mr Lynch: That the Committee note the correspondence.

7. Notes of the private briefings held on 31 August 2020

The Chair noted that a document comprising of notes taken at the private briefings on 31 August 2020 had been circulated for the information of Members.

8. Submissions

8.1 Publication of Submission 28

Resolved on the motion of Ms Mihailuk: That the Committee authorise publication in full of the revised submission from the Mental Health Commission as submission 28.

8.2 Publication of Submissions 106, 110, 116 and 131.

Resolved, on the motion of Mr Donnelly: That the Committee authorise publication in full of submissions 106, 110, 116 and 131.

8.2 Publication of Submissions 145 to 190

Resolved, on the motion of Mr Farlow:

- a) That the Committee authorise publication in full of submissions 145-154, 157-174, 176-181, and 183-188.
- b) That the Committee authorise the partial publication, with the name suppressed, of submissions 155, 175, 182, and 189, as requested by the authors.
- c) That the Committee authorise the partial publication, with the name suppressed and author's initials used, of submission 156, as requested by the author.

Resolved, on the motion of Mr Farlow, seconded Mr Donnelly: That submission 190 remain confidential.

9. General Business

The Committee agreed that the notes from the private briefing from the Department of Communities and Justice should not be provided to witnesses, given that representatives from the Department were to be invited to appear at a public hearing.

The Committee noted that it would consider any further supplementary submission from Mr Mark Sneddon of the Institute for Civil Society, as requested by Mr Sneddon during the hearing.

Resolved, on the motion of Ms Mihailuk, seconded Mr Dib: That any witnesses sent additional questions by the Committee also be advised in writing that they are not required to provide answers if they are unable to do so.

Next meeting

The Chair adjourned the meeting at 5:15 pm to reconvene at 8:50 am on Thursday 5 November.

MINUTES OF MEETING No 6

8:57 am 5 November 2020

Macquarie Room, Parliament House and via Webex videoconference

Members present in the Macquarie Room

The Hon. Gabrielle Upton MP (Chair), Mr Paul Lynch MP (Deputy Chair), Mr Jihad Dib MP, the Hon. Greg Donnelly MLC, the Hon. Scott Farlow MLC, The Hon. Sam Farraway MLC, Mr Alex Greenwich MP, the Hon. Mark Latham MLC, Ms Jenny Leong MP, Ms Tania Mihailuk MP, Ms Robyn Preston MP, Mr Gurmesh Singh MP.

Members present via Webex videoconference

The Hon. Catherine Cusack MLC, and Dr Joe McGirr MP.

Officers in attendance

Ms Elaine Schofield, Mr Ben Foxe, Ms Caroline Hopley, Mr Aden Bates, Ms Jacqueline Linnane, Ms Jacqueline Isles, Ms Mohini Mehta, Ms Ilana Chaffey.

1. Apologies**2. Confirmation of minutes**

Resolved, on the motion of Mr Donnelly: That the minutes of the meeting of 23 October 2020 be confirmed.

3. Procedural resolutions for the public hearing

Resolved, on the motion of Mr Donnelly:

- a) That the Committee authorises the audio-visual recording, photography, and broadcasting of the public hearing on 5 November 2020 in accordance with the Legislative Assembly's guidelines for coverage of proceedings for Parliamentary Committees administered by the Legislative Assembly.
- b) That the corrected transcript of public evidence given on 5 November 2020 be authorised for publication and uploaded on the Committee's website.
- c) That witnesses be requested to return answers to questions taken on notice within 1 week of the date on which the questions and a copy of their Hansard transcript are forwarded to the witnesses, and that once received, answers be published on the Committee's website.
- d) That any documents tendered during the public hearing be considered by the Committee for publication at a deliberative meeting following the public hearing.

4. Correspondence**4.1 Received**

- a) Email from Ms Andrea Cornish, Senior Policy Advisor and Editor, AMA NSW, declining the invitation to AMA NSW to appear at the 5 November hearing, received 22 October 2020.
- b) Email from Mr Joseph Watson, Manager, Strategy, Research and Policy, Catholic Schools NSW, declining the invitation to Catholic Schools NSW to appear at a hearing, received 23 October 2020.
- c) Email from Mr Alistair McConnachie, Deputy Executive Director, New South Wales Bar Association, declining the invitation to the New South Wales Bar Association to appear at a hearing, received 26 October 2020.
- d) Email from Ms Gemma Iafate, Office Manager, Business Council of Australia, declining the invitation to the Business Council of Australia to appear at the 6 November hearing, received 26 October 2020.
- e) Email from Ms Nicola Street, National Manager – Workplace Relations Policy, Ai Group, declining the invitation to the Ai Group to appear at the 6 November hearing, received 27 October 2020.
- f) Email from Fr Yuhanna Azize, Maronite Chancery, declining the invitation to appear at a hearing, received 28 October 2020.

Resolved, on the motion of Mr Farlow: That the Committee note the correspondence.

5. Submissions

The Chair referred to the email correspondence, previously circulated, sent by the author of Submission 184 on 20 October 2020 requesting that their name be kept confidential to the Committee.

Resolved, on the motion of Mr Greenwich: That the Committee amend its publication order for Submission 184 to publish the submission with the author's name suppressed.

6. Document provided after the 23 October hearing

At the 23 October 2020 hearing Mr Ghassan Kassisieh, Legal Director, Equality Australia foreshadowed that he wished to provide and table a document.

Mr Kassisieh provided two documents to the Secretariat via email on 29 October 2020, titled 'More than 80 organisations jointly endorse statement raising concerns with One Nation NSW's Religious Discrimination Bill', and 'The One Nation NSW Religion Bill: Joint Statement Explainer'. These documents had been then circulated to the Committee.

Resolved, on the motion of Mr Greenwich: That the Committee receive the documents provided by Mr Kassisieh, and publish the document titled 'More than 80 organisations jointly endorse statement raising concerns with One Nation NSW's Religious Discrimination Bill' on the Committee's website.

The Chair adjourned the deliberative meeting at 9:12 am.

7. Public hearing

The Chair opened the public hearing at 9:15 am.

The following witnesses were admitted and examined in person:

Dr Mary O'Sullivan, NSW Executive Committee Member, Women's Electoral Lobby, affirmed and examined.

Ms Hayley Foster, Chief Executive Officer, Women's Safety, affirmed and examined.

Ms Kellie McDonald, Senior Solicitor, Women's Legal Service, affirmed and examined.

Ms Leong took a point of order that a question from Mr Latham was out of order.

The Chair ruled that the question was in order.

Ms Leong objected to the Chair's ruling.

At 9:24 am the Chair asked that the witnesses leave the hearing room. The witnesses withdrew. The Committee adjourned the public hearing to deliberate in private.

Ms Leong moved: That the question from Mr Latham is out of order.

Discussion ensued.

Ms Leong withdrew her motion.

At 9:41 am deliberations concluded.

The witnesses were readmitted and at 9:42 am the public hearing resumed.

Evidence completed, the witnesses withdrew.

At 10:41 am the following witnesses were admitted and examined in person:

Mr Keysar Trad, Chief Executive Officer, Australian Federation of Islamic Councils, affirmed and examined.

Ms Maha Abdo OAM, Chief Executive Officer, Muslim Women Australia, affirmed and examined.

Mr Bilal Rauf, Spokesperson, Australian National Imams Council, affirmed and examined.

The following witness was admitted and examined by videoconference:

Dr Rateb Jneid, President, Australian Federation of Islamic Councils, affirmed and examined.

Evidence completed, the witnesses withdrew.

At 11:56 am the following witnesses were admitted and examined in person:

Dr Peter Stuart, Bishop, Anglican Diocese of Newcastle, sworn and examined.

Ms Elise Christian, Advocacy Taskforce Spokesperson, Equal Voices, sworn and examined.

Bhante Akālika Bhikkhu, Director, Buddhist Council of NSW, and Spiritual Adviser, Rainbodhi LGBTQIA+ Buddhist Community, affirmed and examined.

Evidence completed, the witnesses withdrew.

At 2:26 pm, the following witness was admitted and examined in person:

Professor John Whitehall, National Chair, Christian and Dental Fellowship of Australia, sworn and examined.

The following witness was admitted and examined by videoconference:

Dr Geoff Newcombe AM, Chief Executive, The Association of Independent Schools, sworn and examined.

The Chair reported that the scheduled witness Dr Patrick Quirk, Associate Professor, St Thomas More Law School, Australian Catholic University, was an apology for the hearing.

Evidence completed, the witnesses withdrew.

At 3:54 pm the following witnesses were admitted and examined in person:

Dr Vijay Roach, President, Royal Australian and New Zealand College of Obstetricians and Gynaecologists, affirmed and examined.

Ms Julie Hamblin, Board Director, Royal Australian and New Zealand College of Obstetricians and Gynaecologists, affirmed and examined.

Dr Justin Koonin, President, ACON, affirmed and examined.

Mr Brent Mackie, Associate Director, ACON, affirmed and examined.

Evidence completed, the witnesses withdrew.

At 4:55 pm the Chair closed the public hearing, and the Committee resumed the deliberative meeting.

8. General Business

Resolved, on the motion of Ms Mihailuk, seconded Mr Lynch: That any witnesses asked throughout all hearings to take questions on notice by the Committee be advised in writing that they are not required to provide answers if they are unable to do so.

Next meeting

The Chair adjourned the meeting at 5:02 pm to reconvene at 8:50 am on Friday 6 November 2020.

MINUTES OF MEETING No 7

9:02 am 6 November 2020

Macquarie Room, Parliament House and via Webex videoconference

Members present in the Macquarie Room

The Hon. Gabrielle Upton MP (Chair), Mr Paul Lynch MP (Deputy Chair), Mr Jihad Dib MP, the Hon. Greg Donnelly MLC, the Hon. Scott Farlow MLC, The Hon. Sam Farraway MLC, Mr Alex Greenwich MP, the Hon. Mark Latham MLC, Ms Jenny Leong MP, Ms Tania Mihailuk MP, Ms Robyn Preston MP, Mr Gurmeh Singh MP.

Members present via Webex videoconference

The Hon. Catherine Cusack MLC and Dr Joe McGirr MP.

Officers in attendance

Ms Elaine Schofield, Mr Ben Foxe, Ms Caroline Hopley, Mr Aden Bates, Ms Jacqueline Linnane, Ms Jacqueline Isles, Ms Mohini Mehta.

1. Apologies

Mr Farraway (arrived at 2:25 pm), Mr Greenwich (arrived at 10:20 am).

2. Procedural resolutions for the public hearing

Resolved, on the motion of Mr Donnelly:

- e) That the Committee authorises the audio-visual recording, photography, and broadcasting of the public hearing on 6 November 2020 in accordance with the Legislative Assembly's guidelines for coverage of proceedings for Parliamentary Committees administered by the Legislative Assembly.
- f) That the corrected transcript of public evidence given on 6 November 2020 be authorised for publication and uploaded on the Committee's website.
- g) That witnesses be requested to return answers to questions taken on notice within 1 week of the date on which the questions and a copy of their Hansard transcript are forwarded to the witnesses, and that once received, answers be published on the Committee's website.
- h) That any documents tendered during the public hearing be considered by the Committee for publication at a deliberative meeting following the public hearing.

The Chair noted that three advisors to Archbishop Anthony Fisher and Archbishop Haigazoun Najarian would be present in the public gallery.

The Chair adjourned the deliberative meeting at 9:09 am.

3. Public hearing

The Chair opened the public hearing at 9:10 am.

The following witnesses were admitted and examined in person:

Archbishop Anthony Fisher, Archbishop of Sydney, Catholic Archdiocese of Sydney, sworn and examined.

Archbishop Haigazoun Najarian, Primate of the Diocese of the Armenian Church of Australia and New Zealand, Armenian Apostolic Church of Holy Resurrection, sworn and examined.

Mr Greenwich entered the hearing at 10:20 am.

Evidence completed, the witnesses withdrew.

At 10:48 am, the following witnesses were admitted and examined in person:

Ms Maria Nawaz, Deputy Chair, Human Rights Committee, Law Society of NSW, affirmed and examined.

Ms Dianne Anagnos, Principal Solicitor, Kingsford Legal Centre, affirmed and examined.

Evidence completed, the witnesses withdrew.

At 12:07 pm, the following witnesses were admitted and examined in person:

Archbishop Glenn Davies, Archbishop of Sydney, Anglican Church Diocese of Sydney, sworn and examined.

Bishop Michael Stead, Bishop of South Sydney, Anglican Church Diocese of Sydney, sworn and examined.

Associate Professor Neil Foster, Board Member, Freedom for Faith, sworn and examined.

Evidence completed, the witnesses withdrew.

Mr Farraway entered the hearing at 2:25 pm.

At 2:26 pm, the following witnesses were admitted and examined in person:

Rev. Dr John McClean, Convenor, Gospel, Society and Culture Committee, Presbyterian Church of Australia in the State of NSW, sworn and examined.

Ms Sheryl Sarkoezy, Researcher, Gospel, Society and Culture Committee, Presbyterian Church of Australia in the State of NSW, sworn and examined.

Rev. Dr Steve Bartlett, Director of Ministries, Baptist Association NSW and ACT, sworn and examined.

Evidence completed, the witnesses withdrew.

At 3:27 pm, the following witnesses were admitted and examined in person:

Ms Lisa Annese, Chief Executive Officer, Diversity Council Australia, affirmed and examined.

Ms Karla Dunbar, Governance, Policy and Research Officer, Diversity Council Australia, affirmed and examined.

Evidence completed, the witnesses withdrew.

At 4:48 pm the Chair closed the public hearing, to reconvene on Monday 16 November 2020.

MINUTES OF MEETING No 8

8:56 am 16 November 2020

Jubilee Room, Parliament House and via Webex videoconference

Members present in the Jubilee Room

The Hon. Gabrielle Upton MP (Chair), Mr Paul Lynch MP (Deputy Chair), Mr Jihad Dib MP, the Hon. Greg Donnelly MLC, the Hon. Scott Farlow MLC, the Hon. Sam Farraway MLC, Mr Alex Greenwich MP, Ms Jenny Leong MP, Dr Joe McGirr MP, Ms Tania Mihailuk MP, Ms Robyn Preston MP, Mr Gurmish Singh MP.

Members present via Webex videoconference

The Hon. Catherine Cusack MLC and the Hon. Mark Latham MLC.

Officers in attendance

Ms Elaine Schofield, Mr Ben Foxe, Ms Caroline Hopley, Ms Jacqueline Linnane, Ms Jacqueline Isles, Ms Ilana Chaffey, Ms Mohini Mehta.

1. Apologies**2. Confirmation of minutes**

Resolved, on the motion of Mr Greenwich: That the minutes of the meetings of 5 November and 6 November 2020 be confirmed.

3. Correspondence**3.1 Received**

- a) Email from Mr G Jayaraman (also known as Mr Jay Raman), NSW President, Hindu Council of Australia, advising that Mr Surinder Jain, Director, Hindu Council of Australia, would represent the Hindu Council at the 16 November 2020 public hearing, received 2 November 2020.
- b) Email from Ms Elise Gharrach, Executive Assistant and Communications Advisor to Bishop Antoine-Charbel Tarabay, Maronite Catholic Diocese of Australia, confirming that the Maronite Church of Australia is represented at the hearings by Archbishop Hagiazoun Najarian, as the Australasian-Middle East Apostolic Churches representative, received 10 November 2020.
- c) Email from Mr Greg Bondar, NSW/ACT State Director, FamilyVoice Australia, regarding the choice of witnesses to appear before the Committee at public hearings, received 11 November 2020.
- d) Letter from His Grace The Right Reverend Siluan, Bishop of the Metropolitanate of Australia and New Zealand, Serbian Orthodox Church, nominating Dr Con Kafataris, President of the Australian Christian Alliance, and Mr Milomir Andjelkovic, Advisor to Bishop Siluan, to appear on behalf of Bishop Siluan, received 12 November 2020.

3.2 Draft correspondence proposed to be sent

- a) Draft email to Mr Greg Bondar, NSW/ACT State Director, FamilyVoice Australia, indicating that the Committee will be able to consider the evidence given in the FamilyVoice Australia submission, and thanking Mr Bondar for his submission and interest in the inquiry.

Resolved, on the motion of Mr Donnelly: That the Committee note the correspondence, and that the Secretariat respond to Mr Greg Bondar with the draft correspondence as circulated to the Committee.

4. Procedural resolutions for the public hearing

The Chair informed the Committee that a Legislative Assembly staff member would attend the public hearing to take some photographs for corporate purposes. No objections were raised by Committee members.

Resolved, on the motion of Ms Mihailuk:

- a) That the Committee authorises the audio-visual recording, photography, and broadcasting of the public hearing on 16 November 2020 in accordance with the Legislative Assembly's guidelines for coverage of proceedings for Parliamentary Committees administered by the Legislative Assembly.
- b) That the corrected transcript of public evidence given on 16 November 2020 be authorised for publication and uploaded on the Committee's website.
- c) That witnesses be requested to return answers to questions taken on notice within 1 week of the date on which the questions and a copy of their Hansard transcript are forwarded to the witnesses, and that once received, answers be published on the Committee's website.
- d) That any documents tendered during the public hearing be considered by the Committee for publication at a deliberative meeting following the public hearing.

5. Additional questions to witnesses

Resolved, on the motion of Mr Donnelly: That any answers to additional questions sent to witnesses be published on the Committee's website once received by the secretariat.

The Chair adjourned the deliberative meeting at 9:00 am.

6. Public hearing

The Chair opened the public hearing at 9:00 am.

The following witness was admitted and examined by videoconference:

Dr Annabelle Bennett AC SC, President, Anti-Discrimination NSW, affirmed and examined.

Evidence completed, the witness withdrew.

At 9:53 am the following witnesses were admitted and examined in person:

Ms Catherine Lourey, Mental Health Commissioner, NSW Mental Health Commission, affirmed and examined.

Mr Paul McKnight, Acting Deputy Secretary, Law Reform and Legal Services, Department of Communities and Justice, affirmed and examined.

Mr Stephen Bray, Director, Civil Justice, Vulnerable Communities and Inclusion, Policy, Reform and Legislation, Department of Communities and Justice, affirmed and examined.

Evidence completed, the witnesses withdrew.

At 11:09 am, the Committee adjourned the public hearing to deliberate in private.

The Committee deliberated on the publication of submission 191.

Resolved, on the motion of Mr Donnelly: That the Committee authorise publication in full of submission 191, with the name and position of the author redacted.

The Chair advised that an additional submission, numbered 192, had been received and had been circulated by email to Members prior to the meeting. Discussion ensued.

Resolved, on the motion of Mr Farroway: That the Committee authorise publication in full of submission 192 from the Australian Sikh Association.

At 11:16 am deliberations concluded.

The public hearing resumed.

At 11:18 am, the following witnesses were admitted and examined in person:

Mr Milomir Andjelkovic, Adviser to Bishop Siluan, Bishop of the Metropolitanate of Australia and New Zealand, Serbian Orthodox Church, sworn and examined.

Dr Con Kafataris, President and Founder, Australian Christian Alliance, sworn and examined.

The following witness was admitted and examined by videoconference:

Dr Patrick Quirk, Associate Professor, St Thomas More Law School, Australian Catholic University, sworn and examined.

Evidence completed, the witnesses withdrew.

At 12:22 pm the following witnesses were admitted and examined in person:

Mr Mahmud Hawila, Adviser, Lebanese Muslim Association, sworn and examined.

Mr Surinder Jain, National Vice-President and Director, Hindu Council of Australia, sworn and examined.

Mr Gagandeep Singh, Assistant Company Secretary, Australian Sikh Association, sworn and examined.

Mr Narinder Singh, Assistant Treasurer, Australian Sikh Association, sworn and examined.

Evidence completed, the witnesses withdrew.

At 1:25 pm, the Chair closed the public hearing, to reconvene at a time and date to be determined.

MINUTES OF MEETING No 9

11:36 am 9 March 2021

Room 814/15, Parliament House and via Webex videoconference

Members present in 814/815

The Hon. Gabrielle Upton MP (Chair), Mr Paul Lynch MP (Deputy Chair), Mr Jihad Dib MP, the Hon. Greg Donnelly MLC, the Hon. Scott Farlow MLC, the Hon. Sam Farraway MLC, Mr Alex Greenwich MP, the Hon. Mark Latham MLC, Ms Jenny Leong MP, Ms Tania Mihailuk MP, Mr Gurmesh Singh MP.

Members present via Webex videoconference

Dr Joe McGirr MP and Ms Robyn Preston MP

Officers in attendance

Mr Jonathan Elliot, Ms Elaine Schofield, Ms Caroline Hopley, Ms Jacqueline Isles, Ms Mohini Mehta, Mr Ze Nan Ma

1. Apologies

The Hon. Catherine Cusack MLC

2. Confirmation of minutes

Resolved, on the motion of Mr Greenwich, seconded by Mr Farlow: That the minutes of the meetings of 16 November 2021 be confirmed.

3. Correspondence

3.1 Received

- a) Email from Mr William Armour to the Chair, received 13 November 2020
- b) Letter from Kecia O'Sullivan to the Chair, received 16 November 2020
- c) Email from Mr Phil White to the Chair, received 18 November 2020
- d) Email from Rev. Dr Peter Barnes, Moderator-General of the Presbyterian Church of Australia, received 6 December 2020
- e) Email from Mr Narinder Singh, Assistant Treasurer, Australian Sikh Association, received 8 December 2020 (WE SHOULD CHECK WITH MR SINGH IF HE WANTS TO SEND A SEPARATE LETTER TO REPLACE THIS ONE, AS THIS ONE WAS IN RESPONSE TO THE TRANSCRIPT).
- f) Email from Mr Julian Richards to Mr Latham, received 8 December 2020
- g) Letters from Mr Steven Planinac to Mr Singh (17 December 2020), Mr Donnelly (21 December 2020), and the Chair (22 December 2020)
- h) Email from Dr Peter Stuart, Anglican Bishop of Newcastle, received 20 December 2020.

3.2 Sent

- a) Email to Mr Greg Bondar, NSW&ACT State Director, FamilyVoice Australia, indicating that the Committee will be able to consider the evidence given in the FamilyVoice Australia submission, and thanking Mr Bondar for his submission and interest in the inquiry, sent 19 November 2020.

Resolved, on the motion of Ms Leong, seconded by Mr Dib: That the Committee note the correspondence.

4. Answers to questions on notice

- (a) The Committee considered requests from the Diversity Council Australia for confidentiality regarding publication of answers to questions on notice from the public hearing of 6 November 2020.

Resolved, on the motion of Mr Greenwich: That the Committee keep the material confidential to the Committee.

- (b) The Committee considered requests from Anti-Discrimination NSW for confidentiality regarding publication of answers to questions on notice from the Hearing of 16 November 2020

Resolved, on the motion of Mr Donnelly: That the Committee publish the questions and answers in full.

5. Correction to evidence given at hearing

The Committee considered an email from Dr Peter Stuart, Bishop of Newcastle, by email dated 16 November 2020, correcting evidence he gave at a hearing on 5 November 2020. Discussion ensued.

Resolved, on the motion of Mr Farlow, seconded Mr Greenwich: That the Committee accept the further evidence and order it be inserted as a footnote to the transcript of evidence of 5 November 2020 at page 26 as follows:

Footnote: Dr Stuart provided further evidence to the Committee by email dated 16 November 2020 that in "the 2016 census for the region covered by the Diocese has a population of 1,004,296 of whom 240,780 indicated an affiliation with the Anglican Church of Australia."

6. Final report of the survey online submissions results

The Committee considered the final report of the survey online submissions results.

Resolved, on the motion of Mr Faraway: That the Committee publish the report on its website.

7. General business

The Chair notified the Committee that the draft report would be circulated within a week.

The Chair informed the Committee that an amendment sheet would be circulated with the report for the members to use to submit amendments. The Chair requested that members circulate any amendments to the report prior to the deliberative meeting.

The Chair noted that the report was confidential until it has been tabled in Parliament.

8. Next meeting

The meeting closed at 11:52am until the next meeting of the Committee at a date and time to be confirmed.

UNCONFIRMED MINUTES OF MEETING No 10

11:40 am, Monday 22 March 2021

Jubilee Room and Webex videoconference

Members present in the Macquarie Room

The Hon. Gabrielle Upton MP (Chair), Mr Paul Lynch MP (Deputy Chair), Mr Jihad Dib MP, the Hon. Greg Donnelly MLC, the Hon. Scott Farlow MLC, the Hon. Sam Farraway MLC, Mr Alex Greenwich MP, the Hon. Mark Latham MLC, Ms Jenny Leong MP, Dr Joe McGirr MP, Ms Tania Mihailuk MP, Ms Robyn Preston MP, Mr Gurmeh Singh MP.

Members present via Webex videoconference

The Hon. Catherine Cusack MLC.

Officers in attendance

Mr Jonathan Elliott, Ms Elaine Schofield, Ms Caroline Hopley, Ms Jacqueline Isles, Ms Mohini Mehta, Mr Ze Nan Ma.

7. Confirmation of minutes

Resolved, on the motion of Mr Farlow: That the minutes of the meeting of 9 March 2021 be confirmed.

8. Consideration of the Chair's Draft report

Resolved, on the motion of Mr Latham: That the draft report be considered chapter by chapter.

[1]Resolved, on the motion of Mr Latham: That the Secretariat make a clearer attempt to spell out who the 'Stakeholders' are in the report text.

Chapter One

The Chair proposed that Chapter 1 stand part of the Report:

[2]Resolved, on the motion of Mr Donnelly at paragraph 1.4: That the word 'health' be inserted after 'education'.

[3]Ms Leong moved at paragraph 1.4 that the words 'Religion is substantially different to the other protected attributes in the *Anti-Discrimination Act 1977* (NSW) (the Act) be omitted.

Question put.

The Committee divided.

Ayes: Mr Greenwich, Ms Leong

Noes: Ms Cusack, Mr Donnelly, Mr Dib, Mr Farlow, Mr Farraway, Mr Latham, Mr Lynch, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton

Question resolved in the negative.

[4]Resolved, on the motion of Mr Greenwich;

- at Finding 1 that the words 'where those activities are lawful' be inserted after 'activities';
- at Recommendation 1 that the words 'where that activity is lawful' be inserted after 'activity' .

[5]Ms Leong moved at Finding 1 that the words 'in addition to the existing protected attributes already in the Anti-Discrimination Act' be added at the end of the sentence.

Question put.

The Committee divided.

Ayes: Mr Greenwich, Ms Leong

Noes: Ms Cusack, Mr Donnelly, Mr Dib, Mr Farlow, Mr Farraway, Mr Latham, Mr Lynch, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton.

Question resolved in the negative.

[6]Mr Donnelly moved at Finding 1 that the words 'as those terms are defined in the Bill.' Be inserted after 'activities'

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Donnelly, Mr Dib, Mr Farlow, Mr Farraway, Mr Latham, Mr Lynch, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton

Noes: Mr Greenwich, Ms Leong

Question resolved in the affirmative.

[7]Ms Leong moved that Finding 2 be omitted.

Question put.

The Committee divided.

Ayes: Mr Greenwich, Ms Leong

Noes: Ms Cusack, Mr Donnelly, Mr Dib, Mr Farlow, Mr Farraway, Mr Latham, Mr Lynch, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton

The question resolved in the negative.

[8]Dr McGirr moved that Findings 3 and 4 be omitted and new Findings 3 to 9 be inserted:

Omit Finding 3

The Committee finds that the Bill raised some stakeholder concerns on whether all of the terms are appropriate or necessary to secure its objectives and whether it was wholly compatible with the framework of the *Anti-Discrimination Act 1977 (NSW)*.

Omit Finding 4

The Committee acknowledges the concerns of some community members to ensure that the Government Bill should not have the unintended consequence of creating discrimination on the basis of other protected attributes in the *Anti-Discrimination Act 1977 (NSW)*.

Insert Findings 3 to 9

Finding 3

There was strong public support for the Bill. Of the 19,403 responses to the Committee's online questionnaire in July-August 2020, 68.1% supported the Bill, 5.8% supported it with amendments, 0.7% were neutral, while 25.4% opposed the Bill. The Bill also attracted support from the peak Christian, Islamic and Jewish bodies in NSW.

Finding 4

The Committee found that the terms of the Bill were valid and succeeded in protecting people of religious faith and no faith from discrimination. From extensive public hearings, however, the Committee found several amendments to be necessary to improve the Bill. We regard the Bill as a useful template for this kind of legislation, but it has a number of shortcomings that need to be corrected.

Finding 5

The Committee found the Bill to be consistent with the structure and purpose of the NSW Anti-Discrimination Act. It provides new protections against discrimination; it does not take any away. As Anglican Bishop Michael Stead said in evidence, "This is not a Bill that protects people of religion if they discriminate and attack others. It's a Bill that protects them against discrimination."

Finding 6

The Committee found the Bill does not privilege religion over other protected attributes. It does not create a hierarchy of protections. Indeed, it can be argued that other attributes covered in the Anti-Discrimination Act currently enjoy special treatment because they are protected from speech vilification. This is true of Race (Part 2, Division 3A), Transgender (Part 3A, Division 5), Homosexuality (Part 4C, Division 4) and HIV/AIDS (Section 492XB). The Bill before the Committee has no such protections.

Finding 7

The Committee found that the Bill's determination of the concept of 'religious belief' (genuinely and sincerely held) is consistent with the High Court's ruling in *Church of the New Faith vs. Commissioner of Payroll Tax (Vic)* in 1983, and should be adopted in NSW law.

Finding 8

The Committee believes there is utility in applying the Siracusa Principles to each of the attributes covered in the Anti-Discrimination Act, not just for cases involving religious rights. A new clause in 'Principles of Act' is needed to ensure equal treatment of all attributes, with the effect that the Siracusa Principles' conflict-resolution mechanisms are to be applied whenever any right covered by those Principles is concerned.

Finding 9

The Committee was concerned to hear evidence that the complaints-handling functions of Anti-Discrimination NSW are run by clerical staff (not trained lawyers), and that the organisation has been struggling to create proper computerised records. The acceptance of discrimination complaints can be very distressing and expensive for respondents. It should be handled by professional legal expertise. The Committee regards this as a basic competency standard for the NSW legal system.

Mr Greenwich moved an amendment to Dr McGirr's amendment to omit the words "that Findings 3 and 4 be omitted " and that the additional Findings be inserted after Finding 4.

Question put.

The Committee divided.

Ayes: Mr Greenwich, Ms Leong, Mr Lynch, Ms Upton

Noes: Ms Cusack, Mr Donnelly, Mr Dib, Mr Farlow, Mr Farraway, Mr Latham, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh

The question resolved in the negative.

Ms Leong moved an amendment to Dr McGirr's amendment that the proposed Findings 4 and 5 be omitted.

Question put.

The Committee divided.

Ayes: Mr Greenwich, Ms Leong, Mr Lynch, Ms Upton

Noes: Ms Cusack, Mr Donnelly, Mr Dib, Mr Farlow, Mr Farraway, Mr Latham, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh

The Chair moved an amendment to Dr McGirr's amendment that the proposed Finding 6 be omitted.

Question put.

The Committee divided.

Ayes: Mr Greenwich, Ms Leong, Mr Lynch, Ms Upton

Noes: Ms Cusack, Mr Donnelly, Mr Dib, Mr Farlow, Mr Farraway, Mr Latham, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh

The question resolved in the negative.

Question put that Dr McGirr's amendment be agreed to.
The Committee divided.

Ayes: Ms Cusack, Mr Donnelly, Mr Dib, Mr Farlow, Mr Farraway, Mr Latham, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh

Noes: Mr Greenwich, Ms Leong, Mr Lynch, Ms Upton

The question resolved in the affirmative.

[9]Mr Donnelly moved at Recommendation 1 that the words 'and the Committee recommends using this Bill's definitions of 'religious beliefs' and 'religious activities', the associated definition of 'genuinely believes' in section 22K and the associated interpretive provisions in section 22KA and section 22KB' be inserted after the year '2021'.

Ms Leong moved an amendment to Mr Donnelly's amendment that the words 'this Bill's' be omitted and replaced with 'this One Nation's Bill'.

Question put.
The Committee divided.

Ayes: Mr Greenwich, Ms Leong

Noes: Ms Cusack, Mr Donnelly, Mr Dib, Mr Farlow, Mr Farraway, Mr Latham, Mr Lynch, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton.

The question resolved in the negative.

Question put that Mr Donnelly's amendment be agreed to
The Committee divided.

Ayes: Ms Cusack, Mr Donnelly, Mr Dib, Mr Farlow, Mr Farraway, Mr Latham, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh

Noes: Mr Greenwich, Ms Leong, Mr Lynch, Ms Upton

The question resolved in the affirmative.

[10] Dr McGirr moved that his amendments 2 and 3 be considered *in globo*

The Committee divided.

Ayes: Ms Cusack, Mr Donnelly, Mr Dib, Mr Farlow, Mr Farraway, Mr Latham, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh

Noes: Mr Greenwich, Ms Leong, Mr Lynch, Ms Upton

Question resolved in the affirmative.

Dr McGirr moved, *in globo* :

2. that paragraph 1.11 be omitted:

1.11 However, given the extensive stakeholder commentary on Bill, the Committee recommends that these views and any proposed amendments inform the drafting of the Government Bill.

3. that paragraph 1.12 be omitted:

1.12 In making this recommendation, the Committee acknowledges the concerns of community members regarding potential unintended consequences of the Bill and that the Government Bill in introducing anti-discrimination protections for religion should not create further discrimination.

Ms Leong moved an amendment to Dr McGirr's amendment to retain paragraph 1.12 and in paragraph 1.12 replace the words 'acknowledges the' with 'notes that it heard'.

Question put.

The Committee divided.

Ayes: Mr Dib, Mr Greenwich, Ms Leong, Mr Lynch, Ms Upton

Noes: Ms Cusack, Mr Donnelly, Mr Farlow, Mr Farraway, Mr Latham, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh

Question resolved in the negative.

Question put that Dr McGirr's amendments, *in globo*, be agreed to:

The Committee divided.

Ayes: Ms Cusack, Mr Donnelly, Mr Dib, Mr Farlow, Mr Farraway, Mr Latham, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh

Noes: Mr Greenwich, Ms Leong, Mr Lynch, Ms Upton

Question resolved in the affirmative.

[11]Dr McGirr moved at Recommendation 2(a) that the words 'while recognising the special characteristics and protection requirements of religion' be inserted after '(the Act)'.

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Donnelly, Mr Dib, Mr Farlow, Mr Farraway, Mr Latham, Mr Lynch, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton

Noes: Mr Greenwich, Ms Leong

Question resolved in the affirmative.

[12]Ms Leong moved at Recommendation 2 that the word 'include' be omitted and replaced with the word 'consider'.

Resolved on the motion of Mr Farlow that Ms Leong's amendment be amended to: the words 'consideration of' be inserted before the word 'relevant' in Recommendation 2(c).

Question put that Ms Leong's amendment, as amended, be agreed to.

Question resolved in the affirmative.

[13]Ms Leong moved at Recommendation 2(d) that the words 'and religious organisations' be omitted

Question put.

The Committee divided.

Ayes: Mr Greenwich, Ms Leong

Noes: Ms Cusack, Mr Donnelly, Mr Dib, Mr Farlow, Mr Farraway, Mr Latham, Mr Lynch, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton

Question resolved in the negative.

[14]Resolved on the motion of Dr McGirr that Recommendation 2(e) be omitted:

2(e) protection for individuals from discrimination on the ground of religious beliefs and activities in similar terms as other protected attributes under the Act in areas of public life, including work, education, provision of goods and services, accommodation, registered clubs and State laws and programs

[15]Mr Donnelly moved at Recommendation 2(f) that the words 'religious beliefs and lawful actions motivated by religious belief' be inserted after 'of' in the first line of Recommendation 2(f).

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Donnelly, Mr Dib, Mr Farlow, Mr Farraway, Mr Latham, Mr Lynch, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton

Noes: Mr Greenwich, Ms Leong

Question resolved in the affirmative.

[16]Ms Leong moved that Recommendations 2(f) be omitted.

Question put.

The Committee divided.

Ayes: Mr Greenwich, Ms Leong

Noes: Ms Cusack, Mr Donnelly, Mr Dib, Mr Farlow, Mr Farraway, Mr Latham, Mr Lynch, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton

Question resolved in the negative.

[17]Mr Greenwich moved that Recommendation 2(g) be omitted and replaced with the following:

"2(g) consideration of a process for appropriate exemptions for not-for-profit religious organisations from anti-discrimination provisions on the grounds of religious beliefs or activities by engaging in certain lawful conduct because of their religious doctrines, tenets, beliefs or teachings.'

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Greenwich, Ms Leong

Noes: Mr Donnelly, Mr Dib, Mr Farlow, Mr Farraway, Mr Latham, Mr Lynch, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton

Question resolved in the negative.

[18]Ms Leong moved that Recommendations 2(g) and 2(h) be omitted.

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Greenwich, Ms Leong

Noes: Mr Donnelly, Mr Dib, Mr Farlow, Mr Farraway, Mr Latham, Mr Lynch, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton

Question resolved in the negative.

[19]Mr Greenwich moved that a new Recommendation 2(i) be inserted:

- (i) removal of existing exemptions in the Anti-Discrimination Act that allow for the targeted discrimination against homosexual and transgender people

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Dib, Mr Greenwich, Ms Leong, Mr Lynch

Noes: Mr Donnelly, Mr Farlow, Mr Farraway, Mr Latham, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton

Question resolved in the negative.

[20]Dr McGirr moved at Recommendation 3, after the last word 'report', that the words 'and the Board employs qualified lawyers (not clerical staff) to discharge its complaints handling responsibilities' be inserted.

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Dib, Mr Donnelly, Mr Farlow, Mr Farraway, Mr Latham, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh

Noes: Mr Greenwich, Ms Leong, Mr Lynch, Ms Upton

Question resolved in the affirmative.

[21] Resolved on the motion of Mr Greenwich that in Recommendation 4 after 'broad based-review' the words 'of the' be omitted and replaced with the words 'to update the'.

[22]Ms Leong moved in Recommendation 4 that the words 'the religious' be omitted and that after the word 'whether' the word 'religious' be omitted and replaced with 'further'.

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Greenwich, Ms Leong,

Noes: Mr Dib, Mr Donnelly, Mr Farlow, Mr Farraway, Mr Latham, Mr Lynch, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton

Question resolved in the negative.

[23]Mr Greenwich moved in Recommendation 4 that after the words 'are required in the Act.' insert the words 'The review should also consider further anti-discrimination protections on the basis of race, disability, sex, gender, marital or domestic status, LGBTIQA+ status, and sex work.'

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Greenwich, Ms Leong, Dr McGirr

Noes: Mr Dib, Mr Donnelly, Mr Farlow, Mr Farraway, Mr Latham, Mr Lynch, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton

Question resolved in the negative.

[24]Ms Leong moved in Recommendation 4 after the words 'religious vilification provisions' that the words 'along with the vilification provisions for race, sexual orientation, gender identity, or intersex or HIV/AIDS status'.

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Greenwich, Ms Leong, Dr McGirr

Noes: Mr Dib, Mr Donnelly, Mr Farlow, Mr Farraway, Mr Latham, Mr Lynch, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton

Question resolved in the negative.

[25]Dr McGirr moved after paragraph 1.42 that the following words be inserted:

'The Committee recommends these Objects from the Bill's Explanatory Note as a valid approach for a Government Bill'

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Dib, Mr Donnelly, Mr Farlow, Mr Farraway, Mr Latham, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton

Noes: Mr Greenwich, Ms Leong, Mr Lynch

Question resolved in the affirmative.

[26]Mr Donnelly moved at paragraph 1.50 after the word 'beliefs' that the words ', doctrines, tenets, and teachings' be inserted.

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Dib, Mr Donnelly, Mr Farlow, Mr Farraway, Mr Latham, Mr Lynch, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton

Noes: Mr Greenwich, Ms Leong

Question resolved in the affirmative.

The Chair again proposed that Chapter 1, as amended, stand part of the report.

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Dib, Mr Donnelly, Mr Farlow, Mr Farraway, Mr Latham, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton

Noes: Mr Greenwich, Ms Leong, Mr Lynch

Question resolved in the affirmative.

Chapter 2

The Chair proposed that Chapter 2 stand part of the Report:

[27]Mr Donnelly moved at paragraph 2.25 that a new reference be inserted at footnote 73

'Submission 72, Catholic Bishops of NSW and AMEC, p15'

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Dib, Mr Donnelly, Mr Farlow, Mr Farraway, Mr Latham, Mr Lynch, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton

Noes: Mr Greenwich, Ms Leong

Question resolved in the affirmative.

[28]Mr Donnelly moved after paragraph 2.27 insert:

'Furthermore, in the answer to Question 1 on notice to Dr Bernadette Tobin of the Plunkett Centre she stated:

... The Bill should be written in such a way that a NSW judge would not and could not hold herself out as a theological authority. For this reason I recommend that the Bill define a religious ethos organisation as one that is 'conducted in accordance with, or for the furthering/furtherance/development of, the doctrines, tenets, beliefs or teachings of a particular religion ...'

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Dib, Mr Donnelly, Mr Farlow, Mr Farraway, Mr Latham, Mr Lynch, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton

Noes: Mr Greenwich, Ms Leong

Question resolved in the affirmative.

[29]Mr Donnelly moved the following amendments *in globo*:

- in paragraph 2.38 after the word 'doctrines' insert the words ', tenets and teachings.'

- in paragraph 2.114 after the word 'beliefs' insert the words 'tenets, doctrines and teachings'

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Dib, Mr Donnelly, Mr Farlow, Mr Farraway, Mr Latham, Mr Lynch, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton

Noes: Mr Greenwich, Ms Leong

Question resolved in the affirmative.

[30]Mr Donnelly moved at paragraph 2.114 that a new reference be inserted at footnote 156

'Submission 81, Catholic Schools NSW, pp10-14'

Question put.

The Committee divided.

Ayes: Mr Dib, Mr Donnelly, Mr Farraway, Mr Latham, Mr Lynch, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton

Noes: Ms Cusack, Mr Farlow, Mr Greenwich, Ms Leong

Question resolved in the affirmative.

[31]Mr Donnelly moved after paragraph 2.114 that a new paragraph be inserted:

A number of submissions and evidence from witnesses regarding faith-based schools and education institutions expressed the importance and significance of the current "exemption provisions" applicable to them under the *Anti-Discrimination Act 1977* (NSW). Furthermore, they emphasised the importance and significance to them of the ongoing application of such types of "exemption provisions" into the future.

Question put.

The Committee divided.

Ayes: Mr Dib, Mr Donnelly, Mr Farlow, Mr Farraway, Mr Latham, Mr Lynch, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh

Noes: Ms Cusack, Mr Greenwich, Ms Leong, Ms Upton

Question resolved in the affirmative.

At 1:57pm Mr Latham moved that the meeting be extended by 15 minutes until 2:15pm.

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Dib, Mr Donnelly, Mr Farlow, Mr Farraway, Mr Latham, Mr Lynch, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton

Noes: Mr Greenwich, Ms Leong

Question resolved in the affirmative.

[32]Dr McGirr moved that his amendments 12-19 be considered *in globo*:

Resolved on the motion of Mr Farlow that amendment 19 be omitted from the *in globo* motion.

Question put on Dr McGirr's motion, as amended.

The Committee divided.

Ayes: Ms Cusack, Mr Dib, Mr Donnelly, Mr Farlow, Mr Farraway, Mr Latham, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton

Noes: Mr Greenwich, Ms Leong, Mr Lynch

Question resolved in the affirmative.

Dr McGirr moved his amendments 12 to 18, *in globo*:

12. After Paragraph 2.35, insert: The Committee recommends the legislative approach in this Relevant Provision as suitable for a Government Bill, with the following four amendments:

- a) Australia's ratification of the ICCPR includes partial reservations in relation to Articles 10,14 and 20, which should be acknowledged in the wording of 'Principles of Act', so that (1)(a) now reads: 'the International Covenant on Civil and Political Rights (to the extent that it has been ratified by Australia)'. This amendment was suggested in the Anglican Church, Diocese of Sydney submission.
- b) In '3. Principles of the Act' (page 3 of the Bill), the Government should include additional international human rights conventions, based on interstate experience and its own human rights priorities and legislative agenda. An indicative list was provided to the Committee on page 13 of the Anglican Church, Diocese of Sydney submission and also page 3 of the NSW Jewish Board of Deputies submission.
- c) Under 3. Principles of Act, renumber (3) to (4) and insert new (3) as follows: 'To ensure equal treatment of the attributes protected under all Parts of the Act, the Siracusa Principles shall be used whenever limitations on the rights protected by those Principles are imposed under the Act.'

- d) Insert new subsection (5) in 3. Principles of Act: 'For the avoidance of doubt, nothing in Part 2B of the Act excludes, qualifies, limits or restricts the operation of any provision of any other part of the Act, other than in accordance with the Principles set out in this clause 3, including the Siracusa Principles.'

13. After Paragraph 2.83, insert: The Committee recommends the legislative approach in this Relevant Provision as suitable for a Government Bill with the following amendment:

In Section 22K (Definitions), amend the definition of Religious Activities to read: 'Includes engaging in lawful religious activity, motivated by a religious belief'.

14. After Paragraph 2.123, insert: The Committee recommends the legislative approach in this Relevant Provision as suitable for a Government Bill with the following five amendments:

- a) In Section 22K (Definitions), for the definition of Religious Ethos Organisation, in part (c), line 1, insert 'not-for-profit' between 'other' and 'body', so that it reads 'any other not-for-profit body that is conducted...'
- b) To introduce the amendment in (a) above, a definition of 'not-for-profit body' is required, as follows: 'An organisation whose assets and income are applied solely to further its objects and where no portion is distributed directly or indirectly to the members of the organisation (including in the event of the dissolution of the organisation), except as genuine compensation for services rendered or expenses incurred on behalf of the organisation'.
- c) In section 22K, definition of 'religious ethos organisation', insert 'or' at the end of (c) and add the following:
 - (d) a not-for-profit body that provides persons of a particular religious association, affiliation or belief with goods or services for the purpose of promoting their welfare in order to meet the special needs of such persons, or to overcome prejudice and disadvantage arising from such religious association, affiliation or belief.
- d) In Section 22K the definition of Religious Ethos Organisation be amended so that where the words 'is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion' occur these are replaced with 'is conducted in accordance with, or for the furtherance of, the doctrines, tenets, beliefs or teachings of a particular religion'.

- e) In Section 22M (page 6 of the Bill), add subsection (4) as follows: 'For the avoidance of doubt, this section applies despite anything else in this Part.' This is a technical change (raised in several submissions) to avoid any doubt as to whether 22M overrides REO obligations as employers elsewhere in the Bill: Sections 22N, 22S (Qualifying bodies) and 22V (Education).

15. After Paragraph 2.183, insert: The Committee recommends the legislative approach in this Relevant Provision as suitable for a Government Bill with the following four amendments:

- a) In Section 22N(4), at the end of (a)(ii) and (b), add the words 'or the employer's staff'. This amendment should also be made for the protected activities in Sections 22S (Qualifying bodies) and 22V (Education) – that is, broadening the exception clauses to cover the employer's staff as well as employers.
- b) To correct a drafting error at 22N(9), change first words to read 'Subsections (3) – (5) do not apply ...'
- c) In Section 22N(9), also insert new subsection (c), as follows: 'of brand ambassadors employed or contracted solely for the purpose of promoting an organisation's brand, values and public image'; and correct syntax in (a) and (b) by inserting 'by' at the beginning of each clause and deleting 'by' after 'employment' in the first line of (9).
- d) To correct a drafting error at 22V(4), in first line of (a), delete 'or their associate' and add a new subsection (b) as follows: 'a religious activity performed by an associate of the student that does not include any direct criticism of, or attack on, or does not cause any direct and material financial detriment to, the educational authority.'

16. After Paragraph 2.210, insert: The Committee recommends the legislative approach in this Relevant Provision as suitable for a Government Bill.

17. After Paragraph 2.237, insert: The Committee recommends the legislative approach in this Relevant Provision as suitable for a Government Bill with the following amendment:

In Section 22Z, renumber (3) to (4), and insert new (3) as follows: 'For the avoidance of doubt, if a State law or government policy requires service provision available to specified groups of people (including universal service provision) and if a religious ethos organisation, for reasons of religious belief, is unable to meet these requirements in government grant conditions or tender specifications, this does not constitute discrimination.'

18. After Paragraph 2.249, insert: The Committee recommends the legislative approach in this Relevant Provision as suitable for a Government Bill.

Question put that Dr McGirr's amendments be agreed to *in globo*
The Committee divided.

Ayes: Ms Cusack, Mr Dib, Mr Donnelly, Mr Farlow, Mr Farraway, Mr Latham, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton

Noes: Mr Greenwich, Ms Leong, Mr Lynch

Question resolved in the affirmative.

[33]Dr McGirr moved after paragraph 2.263 insert:

The Committee recommends the legislative approach in this Relevant Provision as suitable for a Government Bill

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Dib, Mr Donnelly, Mr Farlow, Mr Farraway, Mr Latham, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh

Noes: Mr Greenwich, Ms Leong, Mr Lynch, Ms Upton

Question resolved in the affirmative.

[34]Dr McGirr moved that his amendments 4 to7 be considered *in globo*:

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Dib, Mr Donnelly, Mr Farlow, Mr Farraway, Mr Latham, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh,

Noes: Mr Greenwich, Ms Leong, Mr Lynch, Ms Upton

Question resolved in the affirmative.

Dr McGirr moved his amendments 4 to 7, *in globo*

4. That paragraph 2.44 be omitted:

2.44 Section 22KB of the Bill also provided clarification that religious belief or activity includes past, future and presumed religious belief or activity. Subsection 22KB(1)(d) provides that a reference to a person's religious belief is a reference to a religious beliefs that a person "will hold in the future or that it is thought a person will hold in the future (whether or not the person in fact will hold the religious belief)". The Committee considers that there are difficulties in determining 'future belief' and that it should be carved out from the definition. While there are existing provisions within the Act in relation to discrimination on the ground of disability, including future or presumed disability, the Committee considers that this is a distinctly different situation as future

disability may be able to be determined by an established individual or family medical history or genetic predisposition.

5. That paragraph 2.45 be omitted:

2.45 In relation to sections 22K and 22KA, the Explanatory Note indicates that a 'sincerity test' should be applied, which gives effect to the approach adopted by the High Court in the *Church of the New Faith v Commissioner for Payroll Tax (Vic)* case. The Explanatory Notes state that the test is a means to avoid courts determining matters of religious doctrine or disputation and does not interfere with the ability to impose legitimate limitations on religious activities, as allowed elsewhere in the Act and the proposed Part 2B. The Committee received stakeholder evidence that the Bill misapplied the Church of New Faith case test, but recommends that the Government consider its appropriateness when drafting the Bill.

6. That at paragraph 2.90 omit the words:

'not provide the necessary clarity to determine its doctrines, tenets, beliefs or teachings and that this may also'

7. That at paragraph 2.254: omit paragraph 2.254,

2.254 The Committee recommends that the President's power to grant an exemption remain since it is consistent with the approach to other attributes covered by the Act.

and insert in its place:

The granting of exemptions have become commonplace at ADNSW and can be seen as a form of tribunal activism. In its submission to the Inquiry, ADNSW expressed its concern about the Bill's provisions for Religious Ethos Organisation, such that:

"There is no requirement that the beliefs accord with the current, accepted or mainstream beliefs of the religion, meaning that archaic and outdated interpretations of religious texts could be used to justify conduct that is currently unlawful."

It would be completely unacceptable if, in administering new anti-religious-discrimination provisions in the Act, ADNSW took it upon itself to start classifying "accepted or mainstream" religious beliefs or those it deems to be "archaic and outdated". ADNSW cannot be allowed to act as the chief theological authority in NSW and use S.126 exemption powers for this purpose. It would undermine the very purpose of the new provisions and lead to the arbitrary approval of various forms of religious discrimination by an unelected administrative body.

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Dib, Mr Donnelly, Mr Farlow, Mr Farraway, Mr Latham, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh

Noes: Mr Greenwich, Ms Leong, Mr Lynch, Ms Upton

Question resolved in the affirmative.

[35]Ms Leong moved, after paragraph 2.10, that a new recommendation be inserted

Recommendation

The Committee recommends that the Government Bill should specifically state that the protection for religious beliefs and activities does not limit or restrict the operation of any other part of the Act.

Question put.

The Committee divided.

Ayes: Mr Dib, Mr Greenwich, Ms Leong, Mr Lynch

Noes: Ms Cusack, Mr Donnelly, Mr Farlow, Mr Farraway, Mr Latham, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton

Question resolved in the negative.

The Chair again proposed that Chapter 2, as amended, stand as part of the report.

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Dib, Mr Donnelly, Mr Farlow, Mr Farraway, Mr Latham, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton

Noes: Mr Greenwich, Ms Leong, Mr Lynch

Question resolved in the affirmative.

Chapter Three

The Chair proposed that Chapter 3 stand part of the Report:

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Dib, Mr Donnelly, Mr Farlow, Mr Farraway, Mr Latham, Mr Lynch, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton

Noes: Mr Greenwich, Ms Leong

Question resolved in the affirmative.

Adoption of report and tabling

Mr Donnelly moved that:

1. That the draft report, as amended, be the report of the Committee, and that it be signed by the Chair and presented to the House.
2. That the Chair and committee staff be permitted to correct stylistic, typographical and grammatical errors.
3. That, once tabled, the report be posted on the Committee's website.

Question put.

The Committee divided.

Ayes: Ms Cusack, Mr Dib, Mr Donnelly, Mr Farlow, Mr Farraway, Mr Latham, Dr McGirr, Ms Mihailuk, Ms Preston, Mr Singh, Ms Upton

Noes: Mr Greenwich, Ms Leong, Mr Lynch

Question resolved in the affirmative.

9. Adjournment

The meeting adjourned at 2:21pm.

Appendix Six – Glossary

AABCAP	Australian Association of Buddhist Counsellors and Psychotherapists
AASW	Australian Association of Social Workers
ACA	Australian Christian Alliance
ACHEA	Australian Christian Higher Education Alliance
ACL	Australian Christian Lobby
ACNC	Australian Charities and Not-for-profits Commission
ACON	AIDS Council of NSW
ACU	Australian Catholic University
ADLEG	Australian Discrimination Law Experts Group
ADNSW	Anti-Discrimination NSW
AHPRA	Australian Health Practitioner Regulation Agency
Ai Group	Australian Industry Group
ALHR	Australian Lawyers for Human Rights
ALRC	Australian Law Reform Commission
AMA	Australian Medical Association
AMAN	Australian Muslim Advocacy Network
AMEC	Australasian-Middle East Christian Apostolic Churches
ANIC	The Australian National Imams Council
AusPATH	Australian Professional Association for Trans Health
CAPA	Council of Australian Postgraduate Associations
COMPPS	Coalition of Major Professional and Participation Sports
DCA	Diversity Council Australia
DCJ	The Department of Communities and Justice
FIEC	Fellowship of Independent Evangelical Churches
ICCPR	International Covenant on Civil and Political Rights
IHRA	Intersex Human Rights Australia
ILGA	International Lesbian, Gay, Bisexual, Trans and Intersex Association
LGBTIQ+	Lesbian, Gay, Bisexual, Transgender and gender diverse, Intersex, Queer, plus
LMA	The Lebanese Muslim Association
MPP	Sport Australia's Member Protection Policy
NSWCCL	New South Wales Council for Civil Liberties

NSWGLRL	New South Wales Gay and Lesbian Rights Lobby
NSWTF	New South Wales Teachers Federation
PHAA	Public Health Association of Australia
PIAC	Public Interest Advocacy Centre
PTYE	Parents for Trans Youth Equity
RANZCOG	Royal Australian and New Zealand College of Obstetricians and Gynaecologists
REO	Religious ethos organisation
SAGE	Sex and Gender Education
WEL	Women's Electoral Lobby
