

**ANTI-DISCRIMINATION AMENDMENT (RELIGIOUS FREEDOMS AND  
EQUALITY) BILL 2020**

**Organisation:**     Uniting Network NSW and ACT

**Date Received:**   21 August 2020



**UNITING NETWORK NSW/ACT**  
welcoming LGBTIQ+ people, same-sex couples and families,  
in all areas of the Church's life, ministry and leadership  
**PO Box 6173 North Ryde NSW 2113**

21 August 2020

The Members  
Joint Select Committee on the  
Anti-Discrimination Amendment  
(Religious Freedom and Equality) Bill 2020  
NSW Parliament House  
Macquarie Street  
Sydney NSW 2000

Via email [religiousfreedombill@parliament.nsw.gov.au](mailto:religiousfreedombill@parliament.nsw.gov.au)

Dear Members,

**Re: Anti-Discrimination Amendment (Religious Freedom and Equality) Bill 2020**

Thank you for the opportunity to provide our comments in response to the legislation.

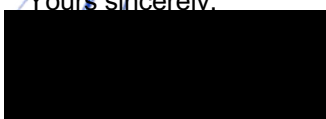
The Uniting Church LGBTIQ+ Network NSW/ACT (hereafter referred to as 'Uniting Network NSW/ACT') is an independent national network in the Uniting Church in Australia (UCA) Synod of NSW/ACT. We are an officially recognised network of the UCA and work within its structures, but we do not represent or speak for the UCA.

In the following paper we will provide details on our concerns with the legislation. Our submission is not confidential and may be published on the relevant Parliamentary website.

Unfortunately, the author of this paper had an unexpected trauma resulting from a minor procedure one week out from the submission requiring multiple days of hospitalisation, and accordingly we have not been able to tailor our response fully, nor has it go through quality review, so this submission may contain spelling and grammatical errors, and as such we apologies in advance for any errors or omissions.

We are willing to meet with the Committee to discuss our concerns in greater detail. Please contact our spokesperson, Jason Masters, National Co-Convenor on [REDACTED] should you wish to engage with us further.

Yours sincerely,



Jason Masters  
Co-Convenor

Uniting Network NSW/ACT – Anti-Discrimination Amendments (Religious Freedom & Equality) Bill

CC: Rev Simon Hanscomb, Moderator, Uniting Church in Australia, NSW/ACT Synod  
Rev Jane Fry, General Secretary, Uniting Church in Australia, NSW/ACT Synod  
Uniting Church LGBTIQ+ Network Australia, National Executive



# UNITING CHURCH LGBTIQ+ NETWORK SUBMISSION IN RELATION ANTI-DISCRIMINATION AMENDMENT (RELIGIOUS FREEDOM AND EQUALITY) BILL 2020

## SUMMARY COMMENT

As an organisation within a Religious Body, we support the fundamental rights of protection from religious discrimination.

However, this legislation goes further than protection, and allow for religious people and organisation to discriminate against others.

Anti-discrimination bills are designed to protect the individual, whereas this legislation expands to include the protection of organisations, unlike any other type of discrimination bill (also a noted area of contention with the proposed Federal Government's similar legislation).

It also creates a structure for professionals to operate at a lower standard than is currently acceptable to the community in NSW. This will only lead to more harm to certain citizens in NSW.

This bill purports to provide religious freedom and *equality*, unfortunately what it does is to drive further inequality in society within NSW, which we believe is unacceptable and unwarranted.

We therefore recommend the Committee reject the Legislation and revert to considering a more traditional Bill of Human Rights.

## AUGUST 2020



# TABLE OF CONTENTS

<b>1. EXECUTIVE SUMMARY .....</b>	<b>5</b>
<b>2. HISTORIAL CONTEXT .....</b>	<b>6</b>
<b>3. Uniting Network and Uniting Church – Support for Human Rights .....</b>	<b>12</b>
<b>4. Bill Discussion .....</b>	<b>15</b>
<b>Removing Existing Discrimination Protections .....</b>	<b>15</b>
Case Study 1 – Religious based intimidation .....	15
Case Study 2 – Religious Allegiance “Required” for Promotion .....	15
<b>Non-Sector Neutrality/Unbalanced Rights .....</b>	<b>16</b>
Case Study 3 – Straight Student Impacted for Standing Up for LGBTIQ Student Bullied .....	16
<b>Limited Controls in relation to Indirect Discrimination .....</b>	<b>17</b>
Case Study 4 – Youth suicide attempt .....	17
Scenario i – Workplace communications .....	18
Scenario ii – Workplace communications .....	18
<b>Broader Health Care Concerns .....</b>	<b>19</b>
Case Study 5 – Doctor providing religious comments to young gay patient.....	19
Case Study 6 – Psychiatrist making religious judgment to vulnerable lesbian patient .....	19
Case Study 7 – HCCC successful complaint against doctors religious comments.....	20
Case Study 8 – VCAT Decision - Jereth Kok V Medical Board of Victoria.....	24
Case Study 9 – Recent Italian case of Doctor providing Gay Conversion Material.....	27
Scenario iii – Young gay man in rural location seeking PreP .....	27
Scenario iv – Women seeking “morning after pill” in remote location .....	27
Scenario v – Travelling transgender person requiring hormones .....	27
<b>Religious Bodies – Corporate Entities .....</b>	<b>29</b>
Case Study 10 – Gay Conversation Therapy .....	29
Case Study 11 – Transgender Conversion Therapy. ....	30
<b>Power .....</b>	<b>33</b>
<b>5. SUMMARY.....</b>	<b>34</b>
<b>Endnotes.....</b>	<b>35</b>

## 1. EXECUTIVE SUMMARY

“Negative public discourse against the LGBT community is present all around the world, heightening people’s exclusion and marginalisation”, a UN human rights expert has told the UN General Assembly.

“Political campaigns, parliamentary debates and public demonstrations reveal social prejudice and misconceptions about the nature and moral character of LGBT people,” said Victor Madrigal-Borloz, the UN’s Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, when presenting his report.

“This vicious cycle of hatred against LGBT people is being fuelled every day. It impacts on their social inclusion and hinders their access to healthcare, education, housing, employment, political participation, personal security and freedom from violence.”

Madrigal-Borloz warned that in some cases, “...LGBT issues were being deliberately used by political and religious leaders, as well as ultra-nationalist and ultra-conservative groups [our emphasis], to advance their own causes.”<sup>i</sup>

This above is a summary from Mr. Victor Madrigal-Borloz 2019 United Nations Report.

We argue that the proposed legislation continues this very theme, heightening the exclusion and marginalisation of LGBTIQ people. Unfortunately, conservative religious organisations are demanding this from the government around Australia, and the One Nation Bill before the NSW Parliament, will achieve this very aim. Rather than adding to social cohesion in NSW, the One Nation Legislation will be creating significant breakdown of social cohesion throughout our State.

The Legislation is proposing to allow religious organisations enormously wide rights of discrimination against a significant proportion of Australian people, which will have significant negative impacts on:

- Women
- People with disabilities
- People of other religions from that of the religious organisation or person with rights to discrimination exercising their newfound discrimination rights
- Aboriginal and Torres Straight Islanders
- People of other ethnicity or races of the religious organisation or person with rights to discrimination exercising their newfound discrimination rights; in addition to
- LGBTIQ people.

We are very disappointed that such legislation has been drafted and tabled in the NSW Parliament. It would seem to us in tabling this Legislation, One Nation has almost exclusively has listened to the conservative religious community, who already have and exercise significant power in our society, rights that others in our society do not have, and have chosen to strengthen their right to discriminate against others.

Consequently, we are left with the position that as a community of people of faith and LGBTIQ (or LGBTIQ Allies) that we must reject the key tenants of this legislations and respectfully request that the Committee will reject the Bill in favour of a Human Rights Bill or recommend significant amendment to the bill:

- We believe that the Bill enshrines unjustified discrimination against LGBTIQ Australians by religious bodies and consequently many other people within the Australian society which is not acceptable.
- We state our support for a comprehensive Human Rights Act, which would balance freedom of religion, speech and assembly, with the range of current anti-discrimination laws, and the removal of various rights to discriminate against LGBTIQ people in Australia.
- If the Parliament is unable to establish a Human Rights Act, then we would recommend that the Committee consider reducing the proposed bill to a traditional anti-discrimination Bill and ensure that when there is a conflict between competing rights, primary non-choice rights (such as gender, race, disability, sexuality orientation or gender identity) are consider higher that choice rights (such as religion).

## 51 2. HISTORIAL CONTEXT

52 In the West Hollywood Library, a library with a very significant collection of LGBTIQ books and  
 53 material, is a book “Historic Speeches and Rhetoric for Gay and Lesbian Rights (1892 – 2000)  
 54 edited by Robert B. Ridinger. Within this large volume is a chapter “September 1, 1999 Australia’s  
 55 First Openly Gay Senator Speaks Brian Greig”. This chapter records the First Speech of Senator  
 56 Greig, and the words of his speech should haunt members of the Parliaments in Australia today.  
 57 The following are extracts from that speech<sup>ii</sup>:

58 “As a nation, Australia maintains appalling laws against gay and lesbian people. We live  
 59 under a regime of **apartheid**. It is an apartheid not based on the colour of our skin, but on  
 60 the colour of our sexuality. **Homophobia is nothing less than sexual racism**. But  
 61 homosexuality is not a behaviour to be regulated. It is an identity to be respected. We are  
 62 people, first and foremost. We work, we have lives, we love and we have relationships. We  
 63 are family.” [emphasis added]

64 When speaking of the murder of Matthew Shepard in America, he goes on to comment:

65 “Before anyone here is tempted to think that this could only happen in America, I remind the  
 66 Senate that no fewer than 30 men have been bashed to death in Sydney since 1990 simply  
 67 because they were gay or presumed to be so. This violence does not occur in a vacuum, it  
 68 is not spontaneous. **Hatred of this kind takes years to mature within societies. It is**  
 69 **nurtured through a culture of invisibility and fear towards gay and lesbian people**  
 70 **and the neglect and indifference of parliaments**. Each time a piece of legislation comes  
 71 before the parliament and touches on human rights and human relationships but excludes  
 72 gay and lesbian people and denies our relationships, it perpetuates this culture of  
 73 invisibility. **Each time a public figure or religious speaker denounces our existence or**  
 74 **seeks to justify our differential treatment, it perpetuates this culture of fear**. As  
 75 Justice Michael Kirby said on this topic recently, ‘The game of shame is over.’” [emphasis  
 76 added]

77 We contend that the legislation being proposed by One Nation is nothing more than the creation of  
 78 a system of religious apartheid within NSW. Where the already-powerful religious gain additional  
 79 powers to discriminate against others in our society. Their target has undoubtedly been the  
 80 LGBTIQ community, but their shameless reaction to the people of Australia and its Parliament to  
 81 allow for same gender marriage (whilst protecting religious organisations), has seen a desire for  
 82 even greater rights of discrimination. To achieve that aim, it is as if no one else should stand in  
 83 their way, and to that extent, this legislation is dangerous as it will allow discrimination and abuse  
 84 towards not only the LGBTIQ community but:

- 85 • Women
- 86 • People with disabilities
- 87 • People of differing faiths (putting at risk people of minority faiths)
- 88 • People of differing ethnicities (to those of the dominate faiths) and
- 89 • People of no faiths.

90 The very words of warning of Senator Greig’s have come back to warn the people and  
 91 governments of Australia of the dangers of Religious Discrimination Bills such as the one  
 92 proposed.

93 Of historic note, Senator Greig attempted to introduce three pieces of legislation during his term, all  
 94 of which were defeated by the Liberal National Party of the day, one of those bills was to eliminate  
 95 discrimination against gay, lesbian, bisexual, transgender and intersex people<sup>iii</sup>. Fortunately, there  
 96 is partial protection and right for these citizens in NSW, but more protections are required.

97 The ILGA World publication “State Sponsored Homophobia 2019 13<sup>th</sup> Edition”<sup>iv</sup> calls out the  
 98 increase and states the following:

- 99 • **Anti-gay crackdowns** took place, with subsequent arrests and torture (generally of men),  
 100 in Chechnya, Cameroun and Tanzania. Each “round up” was cause for domestic but also  
 101 international outcry.

- Chad's new penal code went into effect in 2017 and **criminalised male and female same-sex sexual activity**; the Democratic Republic of Congo and Cote D'Ivoire actively used penal code provisions on "public indecency" and "morality" to arrest and prosecute.
- In a widely-scrutinised federal election in Brazil, **homophobic rhetoric** helped catapult a right-wing candidate to the presidency. The effects of this evangelical victory will likely have deep impact in the region.
- Also in Brazil, Marielle Franco, a progressive black feminist lesbian city councillor was assassinated in what has been taken by activists as a **politically-motivated killing**.
- In Israel, male same sex couples were **denied the right to adopt children through surrogacy** in an unusual legal blow to the LGBTIQ community.
- In a swing to the hard right, the United States **shifted its foreign and domestic policy** toward anti-SOGIESC [Sexual Orientation, Gender Identify and Expression, and Sex Characteristics] positions, **appointed known homophobic, misogynist and transphobic people to high level administrative posts** to represent interests of conservative and religious right-wing NGOs, **denied civil rights protections based** on sexual orientation, and **created electoral wedge issues by suspending trans protections** in the US military and limiting legal protections regarding trans bathroom use.
- **Anti-propaganda laws** continued to present challenges in Russia and neighbouring countries. These efforts to "protect minors" continued to cut off information, limit counselling and place young people, as well as activists and mental health professionals, at risk."<sup>v</sup>

This also is in the context of places such as Poland, where cities are declaring themselves LGBTIQ free, as part of a homophobic agenda<sup>vi</sup>. The Catholic Church was closely aligned to the current Polish Government, particularly around positive discrimination against LGBTIQ people in Poland.

Closer to home "Just months after the proposed Bali bonking ban laws were shelved, villas catering to the gay community have been targeted by Indonesia's powerful anti-LGBTI movement"<sup>vii</sup>, and in Malaysia "Four men between the ages of 26 and 37 have been caned for having a consensual same-sex encounter behind closed doors in Malaysia.. .....Like one-fourth of the world, Malaysia's anti-gay laws were originally imported by British colonizers. In the modern era, powerful Muslim clerics and politicians have used the laws to whip up outrage and support among conservative citizens. Recently, anti-LGBTQ sentiment in the country has gotten louder and deadlier."<sup>viii</sup>

What is consistent with all of these, is religion.

What are the negative strategies used by these religious groups, much of which is based on stories that do not hold validity within their sacred texts in today's context and/or are scientifically / medically / or based on community research found to be falsehoods? From the ILGA report<sup>ix</sup>:

- **"Promotion of the "traditional family" and "traditional values"**. These efforts are quite prominent and rely on creating a mythical and beleaguered "perfect" patriarchal, heteronormative, gendered past. These are sometimes seen as responses to advances by women's rights, sexual and reproductive rights and SOGIESC agendas.
- **Deployment of "Gender Ideology" rhetoric**. This is closely related to the notion of tradition and family as noted above. Often put forward by conservative religious authorities and right-wing NGOs, this has taken root largely in Latin America and Eastern Europe. The Vatican has played a strong role here [and we would add the Sydney Anglican Church in the Australian and Sydney context]. "In short, anti-human rights, conservative and religious groups have developed a tactic that undermines gender-related rights struggles by naming them as "ideological". They argue that people who have a broad definition of gender beyond "sex" are using a dangerous "gender ideology". They see any deviation from the pre-determined definitions and roles of 'man' and 'woman' as threats. They use vitriolic rhetoric to allege plots and conspiracies among defenders of women's rights and rights related to sexuality; they claim that our rights agendas will destroy the family, the State and the social order."



- **Promotion of “religious liberty” or “religious freedom” legal strategies.** This strategy entails conservatives and religious fundamentalists using legal systems to justify people denying provision of various forms of services or goods when they feel they don’t approve either of the ‘product’ or the recipient. So, doctors can try to withhold abortion or other reproductive health care services, pharmacists can try to withhold providing contraception, bakers can try to deny customers cakes for same sex weddings and landlords can deny leases for housing to LGBTI people—all with legal protection. This legal strategy positions conservatives as victims being forced to provide against their conscience. What it really does however, is legally allow random discrimination by individuals against other people.
- **Denial of and attacks on science.** Anti-human rights campaigners and religious authorities further entrenched their positions condemning science, fact and evidence-based information. In particular, their efforts focused on condom use, HIV, homosexuality and contraception. These efforts often rely on the promulgation of lies, propaganda and the spreading of what has become known as ‘fake news’ to sway public opinion. Some of their assertions are ludicrous—and, of course, unproven: for instance, they link abortion to incidence of breast cancer, they argue that masturbation causes illness or that homosexuality is linked to paedophilia.
- **Fear mongering / moral panic.** This too, is an old and effective tactic connected to all of the above. Whether about sexuality or other sets of issues, the creation of an “Other” that poses a threat remains a powerful force in denial of rights. It is here that the anti-gay, the anti-trans, the anti-immigrant, the anti-Muslim, the anti-Semitic, the anti-feminist (and other related sentiments) merge. “Access to abortion will cause a national population crisis.” “These people are massing at the border ready to bring in drugs, rape and take your jobs.” “This group of people is a national security threat.” “Trans people are sick”. “Our children are at risk”. All are fabricated ideas fed to people through manipulated media platforms and manipulative authorities, whether religious or political.”

As we look at this list, we see many of the techniques and tactics of the religious elite against minority groups, such as the LGBTIQ Community, including here in Australia.

Rev Elenie Poulos, a PhD candidate at Macquarie University, has studied Australia’s previous attempt to have a broad-based bill of Human Rights and Anti-Discrimination in 2012.

Rev Poulos summarised the following<sup>x</sup>:

“The draft Bill made three additions to the list of protected attributes in existing legislation—religion, sexual orientation and gender identity—and made discrimination on the basis of all the protected attributes unlawful in ‘any area of public life’. It also extended relationship protections to same-sex couples, again in ‘any area of public life’. The definition of ‘public life’ included: work and work-related areas; education or training; access to public places; and the provision of goods, services, facilities and accommodation. The definition ‘work and work-related areas’ was expanded from existing anti-discrimination law to include ‘unpaid voluntary work’ (Attorney-General’s Department)”

and ...

“In Australian law, freedom of religion is protected through exceptions or exemptions in the Sex Discrimination Act (1984)(SDA) and the Age Discrimination Act (2004)(ADA). These exceptions allow religious organisations, under certain conditions, to lawfully discriminate on the basis of gender, sexual orientation, gender identity, marital status, pregnancy, potential pregnancy and religion, in such matters as ordination, employment in educational and other institutions, and in the delivery of services. The Draft Bill retained these religious exceptions and extended them to include the new attributes of gender identity and sexual orientation (s 32 and s 33). The only other change from existing religious exceptions was a limitation for all Commonwealth- funded aged care services run by religious organisations, making it unlawful to discriminate in service provision, though not in employment (Attorney-General’s Department (2012b, 2).”

Further...

206 “Discrimination would be unlawful on the basis of breastfeeding, disability, family  
207 responsibilities, immigrant status, industrial history, medical history, nationality or  
208 citizenship, political opinion, race, sex and social origin [s 17(1)].”

209 Of concern in Poulos’ article is that in building the case studies analysing the responses, the  
210 response from Uniting Justice Australia (an arm of the Uniting Church of Australia’s Assembly) was  
211 rejected for consideration as it was an ‘outlier’ and supported the concept of a Bill of Rights.  
212 Therefore, one could argue that the analysis of submissions from religious institutions was itself  
213 biased. Further, Poulos comments<sup>xi</sup>:

214 “Contrary to all other church submissions, it stated that the right to religious freedom is not  
215 an ‘absolute right’ that should necessarily trump other rights (Uniting Justice Australia 2012,  
216 7). It alone recommends the inclusion of additional protected attributes: homelessness,  
217 survivor of domestic violence, intersex status and irrelevant criminal record (3); and  
218 expressed concerns about the broad extent of the religious exception granted to religious  
219 bodies and the inclusion of some protected attributes in that exception (specifically,  
220 pregnancy, potential pregnancy, breastfeeding and family responsibilities).”

221 Poulos concludes this study by stating<sup>xii</sup>:

222 “The major concerns of eight Australian Christian denominations as articulated in the  
223 submissions by authoritative church bodies to the Senate Committee inquiry into the  
224 Exposure Draft of the Human Rights and Anti-Discrimination Bill 2012 were:

- 225 • freedom of religion, insofar as it relates to the churches’ freedom to discriminate  
226 against members of the LGBTIQ community; and
- 227 • freedom of speech, insofar as it relates to the freedom of religious bodies and  
228 people to express beliefs even though those beliefs may insult and offend people  
229 within particular minority groups, including minority religions. ....

230 In focusing on the protection of their institutions, the church submissions failed to articulate  
231 the Christian vision or mission of caring for people in need (beyond an occasional cursory  
232 reference) and explicitly opposed laws that sought to uphold the rights and extend  
233 protections of people who suffer certain forms of discrimination, especially LGBTIQ people.  
234 **In seeking to privilege religious freedom in a hierarchy of rights to be protected, the**  
235 **argument for religious freedom became the means by which churches sought to**  
236 **both protect their institutional privilege and entrench their particular moral code in**  
237 **Australian law.”** [emphasis added]

238 Having rejected a Bill of Rights, the conservative religious groups have then lobbied the Australian  
239 Government to provide them with extreme rights, greater than those for all other citizens in  
240 Australia.

241 In Poulos’ more recent publication, she reviews some eleven reviews held in recent time in  
242 Australia that have some connection to Religious Freedom/Rights, entitled “Constructing the  
243 Problem of Religious Freedom: An Analysis of Australian Government Inquiries into Religious  
244 Freedom”<sup>xiii</sup>.

Date	Author	Report
1984	NSW Anti-Discrimination Board	<i>Discrimination and Religious Conviction (DRC)</i>
1998	Human Rights & Equal Opportunity Commission (HREOC)	<i>Article 18: Freedom of Religion and Belief (Article 18)</i>
2000	Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT)	<i>Conviction with Compassion: A report on freedom of religion and belief (CWC)</i>
2008	HREOC	<i>Combating the Defamations of Religions (CDR)</i>
2011	Australian Human Rights Commission (AHRC, formerly HREOC)	<i>Freedom of Religion and Belief in 21st Century Australia (FRB21)</i>
2015	AHRC	'Religious Freedom Roundtable' (RFR)
2017–2019	JSCFADT	<i>Status of the Freedom of Religion or Belief (1st &amp; 2nd Interim reports) (SFRB)</i>
2018	Expert Panel (Philip Ruddock, Chair)	<i>Religious Freedom Review (Ruddock Review)</i>
2018	Senate Legal and Constitutional Affairs References Committee (SLCARC)	'Legislative exemptions that allow faith-based educational institutions to discriminate against students, teachers and staff' (School Exemptions)
<i>Other inquiries that included consideration of freedom of religion or belief</i>		
2003	HREOC	<i>Isma—Listen: National Consultations on Eliminating Prejudice against Arabs and Muslim Australians</i>
2008	Senate Standing Committee on Legal & Constitutional Affairs (SSCLCA)	'Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality'
2009	National Human Rights Consultation Committee (Frank Brennan, Chair)	<i>National Human Rights Consultation Report</i>
2011	AHRC	<i>Addressing Sexual Orientation &amp; Sex and/or Gender Identity Discrimination</i>
2013	Senate Legal & Constitutional Affairs Legislation Committee (SLCALC)	'Report of the inquiry into the exposure draft of the Human Rights and Anti-Discrimination Bill 2012'
2013	SLCALC	'Report on the inquiry into the Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013'
2015	AHRC	<i>Rights and Responsibilities Consultation Report</i>
2015	AHRC	<i>Resilient Individuals: Sexual Orientation, Gender Identity and Intersex Rights</i>
2015	AHRC	<i>Freedom from Discrimination: Report on the 40th Anniversary of the Racial Discrimination Act (2016).</i>
2015	Australian Law Reform Commission (ALRC)	<i>Traditional Rights and Freedoms—Encroachment by Commonwealth Laws</i>
2017	Senate Select Committee on the Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill	'Report on the Commonwealth Government's Exposure Draft of the Marriage Amendment (Same-Sex Marriage) Bill'

Table 1 the Religious Freedom Inquiry Reports<sup>xiv</sup>

As an example, the Churches objected to the NSW proposed updates to the Anti-Discrimination Act as they perceived there was insufficient balancing of conflicting rights.

It is important to recognise that according to Poulos, eight of the nine inquiries recognised there were weaknesses in the protection of religious people in Australian legislation, and that all acknowledge the responsibilities of Australia in this area under international human rights law.

Of the issues synthesised by Poulos there were fundamentally two:

- How to establish a system of anti-religious discrimination in a country of religious diversity?
- How to establish a system of anti-religious discrimination in the country where there are various rights to be balanced?

She references the Australian Law Reform Commission stating:

"Like other human rights it [religious freedom] must be exercised with a mindfulness of the rights of others and has the potential to intersect, and at times compete, with other human rights such as equality before the law and government, and the freedoms of those without faith. The role of law should be to seek accommodation of competing rights and enlarge the freedom for all. Care must be taken to balance rights so that neither **religious freedom** nor any right with which it may intersect is **granted an imbalanced privileging so as to permanently impair the enjoyment of the other.**" [emphasis added]

264 It is this very point that the AHRC outlines that we see as the absolute fatal flaws in the proposed  
265 Commonwealth bills, which are recreate in the proposed NSW Laws, they create an enormous  
266 imbalance, that privileges the power religious institutions and adherents have over all other  
267 persons in Australia, and in particular impacts the enjoyment and the rights to medical attention  
268 and other health care, access to aged care and being subject to abuse and harm for minority  
269 groups as examples.

270 At the end of the day, can a choice (religious freedom) be a superior right to the existence of a  
271 person or group of people (say women, a race of people, or LGBTIQ people)? Herein lies the  
272 challenge, and potentially problematic approach with balancing rights. We would contend that the  
273 rights of a human as they exist are superior to those rights obtained by a choice, so the protection  
274 of an LGBTIQ person, a woman or a disabled person must be superior to that of a choice, a  
275 religious belief.

276 From this brief summary of history, it can be seen that conservative religious organisations have  
277 been against a bill of rights, primarily as they see their “freedom and rights” to be superior to  
278 everyone else’s rights. We reject this premise.

279 We agree with Senator Greig’s prophetic commentary, that discrimination against LGBTIQ people  
280 is a form of apartheid, and the proposed bills create an unbalanced and systematic method of  
281 unprecedented and expanded discrimination in NSW.

### 282 3. Uniting Network and Uniting Church – Support for Human Rights

283 Whilst we speak only on behalf of Uniting Network, as member of the Uniting Church in Australia  
284 (UCA), we are able to call up and references rules, decision, policies etc of the UCA. To that  
285 extent we note that:

286 The national Assembly of the Uniting Church in Australia has made a number of statements  
287 concerning the dignity and rights of the human person as understood within the Christian tradition<sup>xv</sup>  
288 In 2006 the Assembly affirmed:

289 *...the Uniting Church believes that every person is precious and entitled to live with dignity*  
290 *because they are God's children, and that each person's life and rights need to be*  
291 *protected or the human community (and its reflection of God) and all people are*  
292 *diminished.*<sup>xvi</sup>

293 The Christian understanding of human rights is grounded in biblical teaching and the doctrine of  
294 God. This doctrine does not provide an automatic movement to or juxtaposition in terms of  
295 appropriate policy and legislation in the twenty-first century. But, as articulated by the Uniting  
296 Church Assembly, to deny or restrict human rights in any manner, would require the most rigorous  
297 analysis and justification. The onus is on the advocates of limiting human rights to establish their  
298 case. In the current circumstances, there would need to be robust arguments to defend any further  
299 denial of the human rights of other Australians in the name of "religious freedom".

300 The UCA Assembly has also supported the range of international treaties and declarations  
301 including the Universal Declaration of Human Rights ([UDHR] 1948) which states that "everyone  
302 has the right to freedom of thought, conscience and religion", and this includes freedom to practice  
303 religion and to change it.<sup>xvii</sup> We note that this right is also reflected in the 1976 International  
304 Covenant on Civil and Political Rights (ICCPR) and the 1966 International Covenant on Economic,  
305 Social and Cultural Rights.

306 The UCA policies are consistent with churches around the world. On the fiftieth anniversary of the  
307 passing of the UDHR the World Council of Churches called for defending human rights which is  
308 sensitive to different religions, cultures and traditions, and includes:

309 *...the equal rights of young and old, of women and men, and of all persons irrespective of*  
310 *their origin or condition.*<sup>xviii</sup>

311 In 1993 the UCA Assembly endorsed the 1981 Declaration on the Elimination of All Forms of  
312 Intolerance and Discrimination based on Religion or Belief, and endorsed the actions of the then  
313 Commonwealth Government to amending Section 47 of the Human Rights and Equal Opportunity  
314 Act.<sup>xix</sup> Whether this is a sufficient protection is a matter that raises the issue of the need for explicit  
315 statutory protection for religious (and non-religious) belief and how best to achieve that, such as in  
316 a national bill or charter of rights.

317 In 2008 the Standing Committee of the UCA national Assembly declared its support for:

318 *...a national human rights charter that is born from widespread and effective community and*  
319 *stakeholder consultation.*<sup>xx</sup>

320 A key clause in the Declaration on the Elimination of All Forms of Intolerance and Discrimination  
321 based on Religion or Belief is number three in Article 1 which states:

322 *Freedom to manifest one's religion or beliefs may be subject only to such limitations as are*  
323 *prescribed by law and are necessary to protect public safety, order, health or morals or the*  
324 *fundamental rights and freedoms of others.*

325 Prior to the introduction of the Marriage Amendment Bill in late 2017, a Senate inquiry had been  
326 held, including public submissions. The Uniting Network made a submission and appeared before  
327 that Senate inquiry. It is our understanding that the Marriage Act in no way undermines protections  
328 for religions to conduct marriages in accord with their own doctrines, policies and procedures.

329 In the case of the Uniting Church in Australia, following the passage of the Marriage Amendment  
330 (Definition and Religious Freedoms) Act 2017 the General Secretary of the UCA wrote to all UCA  
331 marriage celebrants advising them that, at this point in time, they are not able to officiate at same-  
332 sex marriages. That is the case even though numbers of ordained Ministers have been asked to  
333 and would wish to officiate at same-sex marriages.

334 Subsequently, at the UCA Assembly in 2018, the Assembly determined that there would be two  
335 marriage rites, almost identical, with one being unchanged from the prior wording and the  
336 additional rite being the same except for replacing man and a woman with two persons. The  
337 determination also allows Minister the choice of which rite they would use for marriage (ie they  
338 could choose to only marry a man and a woman or marry any to persons legally allowed to be  
339 married) and a Parish, which has oversight of the Church's property in a particular location if they  
340 would allow a marriage to be performed in that property using the second rite.

341 Since the early 1980s the Uniting Church has been engaged in new understandings of human  
342 sexuality in general and homosexuality in particular.<sup>xxi</sup> For example, the polity of the UCA permits  
343 openly LGBTIQ+ people, including those living in same-sex relationships to be ordained as  
344 Ministers and to be appointed to the full range of UCA ministry positions. UCA Ministers in  
345 congregations with a particular ministry with LGBTIQ+ people regularly conduct services of prayers  
346 and blessings for same-sex couples. This is permitted under UCA polity but is not a marriage  
347 service.<sup>xxii</sup>

348 For the purposes of your consideration of this proposed Bill, this example from the Uniting Church  
349 illustrates the fact that the changes to the Marriage Act in 2017 have not infringed on religious  
350 freedom protections with regard to religious marriage. Therefore, we can see no argument for the  
351 creation or extension of any laws which discriminate against LGBTIQ+ or any other Australians in  
352 employment or the delivery of goods and services such as education, housing, social welfare and  
353 healthcare. It further underlines the important point that within different religious groupings and  
354 denominations, there can be the same diversity of opinion on matters to do with minority groups  
355 and various policies as there is in the wider community

356 The Uniting Church was represented at the November 2015 Australian Human Rights Commission  
357 Religious Freedom Roundtable, at which 25 different belief communities were represented.<sup>xxiii</sup>  
358 There are a number of points which emerged from that Roundtable which have particular  
359 relevance in balancing religious freedom protections and human rights protections for LGBTIQ+  
360 people.

361 As noted at the Roundtable and in various international Declarations, the right to religious freedom  
362 intersects with other human rights, particularly the rights to freedom of expression, freedom of  
363 association and freedom of assembly. If religions and religious practices can interconnect, intersect  
364 and be in tension with ethnicity and culture and racial discrimination then the same is true for  
365 sexual orientation, gender identity and intersex (SOGII) status.

366 In balancing individuals and collective rights, we should not force people to act against their  
367 conscience. The role of government and legislation should be to establish clear boundaries for  
368 legally enforceable behaviour and not to exacerbate social disharmony.<sup>xxiv</sup> It does not seem helpful,  
369 respectful or harmonious, to suggest that there could be a hierarchy of rights, with LGBTIQ+  
370 people being denied some human rights in order to protect a suggested more fundamental right  
371 such as freedom of religion.

372 There are already a large number of exemptions for faith-based organisations in the provision of  
373 education, healthcare, housing and other services, even though the overwhelming majority of  
374 those services receive substantial taxpayer funds. In the overwhelming majority of cases it is very  
375 difficult to see the link between a discriminatory practice and what is described as ‘religious  
376 freedom’.

377 More importantly, most of these exemptions, particularly in the area of health, are appropriately  
378 controlled through detailed state legislation and one impact of these Bills would be to override  
379 these controls and provide open ended exemptions in the area of health care.

380 In healthcare, for example, if a patient presents with a medical condition (eg diabetes) at a faith-  
381 based facility, first principles would suggest the individual be treated for the presenting medical  
382 condition. Refusing to treat a person with diabetes solely on the grounds that they are LGBTIQ, a  
383 single mother etc, would seem to be highly objectionable and contrary to widely held medical  
384 ethics. There are a very small number of medical procedures, notably the termination of pregnancy  
385 and euthanasia, where some faith-based institutions could argue that the procedure is specifically  
386 contrary to the authoritative teachings of their religion.

387 The Uniting Church’s former national agency, Uniting Justice Australia (UJA), supported the 2013  
388 amendments to the Sex Discrimination Act to include sexual orientation, gender identity and  
389 intersex (SOGII) status.<sup>xxv</sup> The same Church agency expressed reservations about the scope of  
390 the exemptions for religious bodies. The UJA submission allowed limited areas where exemptions  
391 might be maintained: the ordained ministry and significant leadership positions.<sup>xxvi</sup>

392 In most, though not all cases, these positions are funded by the Church (not the taxpayer) and are  
393 for purposes which are directly related to a specific religious purpose: for example, the conduct of  
394 worship or hospital chaplaincy. They are, thus, intrinsically and categorically different to a general  
395 purpose, such as teaching mathematics or providing social housing, even if the mathematics is  
396 being taught within a faith-based school or the social housing is owned and managed by a religious  
397 organisation.

398 To state the same position differently, if a particular religion or denomination wishes to exclude  
399 women (or indigenous or LGBTIQ+ people) from the priesthood or the ordained ministry, there is  
400 nothing in Australian law which prevents the religion or denomination from exercising that particular  
401 religious freedom. But the delivery of services, the majority of which are publicly funded, is in a  
402 different category. In the latter case, community norms of respect for universal human rights  
403 override the particularities of the religion or denomination.

404 Rather than further ad hoc anti- discrimination bills, the NSW Parliament should instead  
405 introduce a Bill of Universal Human Rights, which would be consistent with Australia’s  
406 international obligations.

407 **4. Bill Discussion**

408

409 **Removing Existing Discrimination Protections**

410 We note the following:

411 The Bills allow spoken and written communication to a person that is intimidating to another person  
412 from a religious context will be protected.

413 Case Study 1 – Religious based intimidation

414 *A LGBTIQ religious leader was contacted by a person(s) on a gay mobile device app, that*  
415 *was clearly aimed at intimidating the person because of their sexuality and connection to*  
416 *their Church.*

417  
418 *The victim was encouraged by their church to report the matter to the Police.*

419 If the persons were apprehended by the Police, whilst the attack was clearly to intimidate, and  
420 according to the police would not meet the thresholds for action in NSW. Further, if apprehended  
421 we see that in all likelihood, the abuser would be protected by the proposed Religious  
422 Discrimination legislation.

423 Outside of a religious context, there is no justification for abusive, intimidating behaviour by one  
424 Australian against another in the public square.

425 Examples of how the proposed legislation can facilitate abusive behaviour:

- 426 • An Uber driver telling a gay couple that their relationship is sinful and they will go to hell.
- 427 • A teacher telling a student that being adopted by a gay couple is nothing to celebrate. This  
428 is a real case as occurred in the United States in late 2019<sup>xxvii</sup>. Under the proposed  
429 Australian legislation, the teacher is most likely to be protected from any disciplinary action,  
430 while the child is left unprotected.
- 431 • A doctor telling a transgender patient that God only made men and women and didn't make  
432 mistakes (when there is no relevance to the therapeutic appointment).
- 433 • A preschool teacher welcoming children every morning at the gate, telling a single mother  
434 in the ear shot of her children, that she is sinful for leaving her husband (as a result of  
435 domestic violence), and should return and submit to her husband.
- 436 • A psychologist telling a patient that their bipolar disorder is a result of evil spirits and that  
437 they should undergo prayer therapy for healing to remove the disorder.
- 438 • An employee's manager emailing them every day that their homosexuality is sinful and can  
439 be corrected with conversion therapy.

440 Religious based discrimination has a long history in Australia, and it is not appropriate to move  
441 back to those days:

442 Case Study 2 – Religious Allegiance "Required" for Promotion

443 *In railways in South Australian in the 1970's (and potentially earlier), as I was told by*  
444 *my father, it was well known that to obtain a promotion a person needed to be either*  
445 *a member of the Catholic Church or a Freemason, so he became a Freemason.*

446 We note with grave concern, that Christian Schools in Australia have expressed their concerns  
447 relation to the proposed legislation in other jurisdictions to ban conversion therapy for their LGBTIQ  
448 students, and that they are seeking the Federal Act to protect them and their ability to continue to



449 undertake this abusive activity that has no therapeutic value, and at best leads to significant mental  
450 health issues, and at worst, suicide of their student. This NSW Legislation is likely to offer them  
451 the same protection against child abuse.<sup>xxviii</sup>

## 452 Non-Sector Neutrality/Unbalanced Rights

453 The legislation creates different situations for different employees. The Government (and other  
454 governments) has retained for itself the right in relation to codes of conduct and the like, and yet,  
455 removes or limits similar rights for private sector and not-for-profit employers.

456 We are particularly concerned (see prior submission) regarding the inability to provide reasonable  
457 professional standards in relation to health professionals. There are clearly demonstrated risks to  
458 LGBTIQ people from abusive comments from health practitioners. The various health practitioner  
459 professional bodies matters have been confirmed by independent tribunals.

460 We see the overriding of professional bodies, particularly health professional bodies, to protect  
461 non-therapeutic comments, withholding of medically appropriate treatment and other actions in  
462 favour of these religious comments dangerous and potentially life threatening.

463 Religious organisations providing goods and services (often funded by the Australian taxpayer) will  
464 be allowed to discriminate in the area of employment and to whom they provide the goods and  
465 services. There is no real justification for this type of discrimination, just as when Churches argued  
466 for the right to discriminate based on race, or the allowance for slaves was not justifiable nor  
467 sustainable in the past.

### 468 Case Study 3 – Straight Student Impacted for Standing Up for LGBTIQ Student Bullied

469 *A non-Sydney NSW non-public school allowed a new student in middle high school to*  
470 *attend, who is either LGBTIQ or was judged by other students as LGBTIQ and was*  
471 *regularly teased. In late 2019, a straight student attempted to defend the student. During*  
472 *this time, the straight student's younger sibling was being interviewed to commence at the*  
473 *school in 2020 which is usually a fait accompli given 'sibling rules'. The sibling was not*  
474 *granted a place at the school, and it became apparent that it was a result of their older*  
475 *sibling's defence of this new student.*

476 *Consequently, the older sibling, with their younger sibling are now commencing at a new*  
477 *non-public school in 2020, disrupting their education, for simply defending another student*  
478 *from abuse.*

479 Anti-discrimination bills have historically been to protect an individual from discrimination, but these  
480 bills create a new and significant concern by allowing corporations to sue other corporations over  
481 matters of perceived discrimination.

482 Some examples of where this could end up:

- 483 • A hotel chain owned by a Jewish family is sued after it cancels a conference booking  
484 because the conference organiser's keynote speaker announced has a history of stating  
485 that Jewish people are inherently second-class human beings and that the Holocaust was  
486 not real, which are his sincerely held religious views.
- 487 • A printing company could be sued when they refuse to print a brochure that includes the  
488 wording that 'all LGBTIQ kids should die', which is the sincerely held religious view of the  
489 owner of the business wanting the brochures to be printed. Please note, this was a  
490 comment that was made to one of our members during the Marriage Equality campaign in  
491 response to their advocacy.
- 492 • A charity could sue a state government if the government put to tender for services related  
493 adoption and foster care (for example) which indicated that the successful providers must  
494 provide adoption and foster care to all eligible persons in the state (which include single  
495 people, divorced people, people in de-facto relationships, LGBTIQ couples etc), however  
496 the charity refused to provide services to LGBTIQ, divorced people or single parent

497 families. This is of particular concern as governments continue to outsource delivery of  
498 public services, will at the same time increase government funded discrimination.

499 Local governments are permitted to create ordinances to limit public speaking in public spaces,  
500 however these ordinances will be overturned should the speaker in the public space be a religious  
501 speaker. This may also have the consequence of overturning state laws that protect people's  
502 access to abortion clinics.

503 We are also concerned for our Aboriginal and Torres Strait brothers and sisters, whose rights to  
504 exercise their spirituality will not be recognised under this proposed legislation, and yet, we saw in  
505 2018, noting the Sydney Anglican Church proposed to ban Aboriginal Smoking Ceremonies in their  
506 schools, churches and other properties, which was quickly overturned due to public backlash.<sup>xxix</sup>

507

## 508 Limited Controls in relation to Indirect Discrimination

509 It is proposed that an employer cannot use a document such as a "code of conduct" to limit a  
510 person's religious freedom; *"would have the effect of restricting or preventing an employee of the  
511 employer from making a statement of belief at a time other than when the employee is performing  
512 work on behalf of the employer;"*

513 It is our view that there should be a consistency in discrimination law, and that the standard in the  
514 RCA is a standard that should be included in this legislation.

515 The arbitrary nature of this clause (and related clauses) creates this concept of "unjustifiable  
516 financial hardship". It is our view that such a clause is unreasonable.

517 The issue is further compounded when a person's profile becomes significantly larger in the public  
518 domain as a consequence of the opportunity provided to them by their employer. The proposed bill  
519 does not in our view find the balance between the values set by the organisation (such as full  
520 inclusion) and those that might be exposed by their employee, using the profile gained as a benefit  
521 of their employment.

## 522 Case Study 4 – Youth suicide attempt

523 *We refer you to a situation where a 12 year old boy attempted suicide as a result of a high  
524 profile sports person tweeting negative comments in relation to the boys sexual  
525 orientation<sup>xxx</sup>.*

526 *"My question is..."*

527

528 *He paused and then his voice got so quiet that I had to lean in to hear him.*

529

530 *'My question is does God make mistakes, and am I just a mistake?'*

531

532 *It took all I had not to cry with him.*

533

534 *He kept going. 'Israel Folau says that I am going to hell with the drunks and liars and  
535 thieves and other bad people. I am only twelve and I am trying my best. I thought God  
536 loved me but now I don't know anymore. I just feel bad and ashamed. I don't know what to  
537 do.'*

538 *Then he said the thing that made my heart stop.*

539

540 *'It makes me feel so bad that I wish I was dead. I think everyone might be better off without  
541 me if I can't fix this problem.'* .....

542

*I rang his mum, Julie. She came straight over and I supported Matt while he had a very hard conversation with his mum about his sexuality. Both of them cried and we all hugged and Julie promised her son that she still loved him and that everything would be okay. ....*

*Then Julie sent Matt downstairs to put his bike on the racks on the back of her car. 'I've thought that he might be gay ever since he was two or three,' she said. 'And of course his Dad will be okay with it. It's 2019. We're a modern family. All we want for our boys is that they are healthy and happy.'*

*'Did you know he's been thinking about harming himself?' I asked.*

*Julie went pale. 'No,' she said, her eyes filling with tears. 'Okay, thanks for letting me know. I'll take him home now and we'll get this sorted.' We hugged again and she drove away.*

*...*

*Julie rang me late yesterday. Matt is in hospital after a suicide attempt. He's twelve. He's a great kid who has been terribly distressed by everything that is happening right now about Israel Folau's fight with Rugby Australia over Folau's right to freedom of speech, and about Matt's idol's continued stance on homosexuality as a sin against God.*

*In a subsequent post, the author provided an update<sup>xxxi</sup>.*

*"PS – I'm grateful for the outpouring of love and support for Matt and his family, and for the kindness and care you've shown me after yesterday's post. Matt is off life support, but still in ICU. He's stable and he and his family are being well looked after."*

We note that the proposed legislation allows for religious organisations to make claim of discrimination (with which we disagree). However, there is no equal right or limited rights for businesses when be harmed by their employees using religious freedom to negatively impact their values and position in public.

We see the potential for unintended consequences in the Act, allowing religious people to communicate to fellow employees in a manner that may not be in accordance with their employers code of conduct, and the employer may not be able to take appropriate action to protect the affected employee, not take action against the originating employee, particularly in interrelationship of these type of clauses.

#### Scenario i – Workplace communications

*An employee sends to another employee from their personal email account an email daily that because they are a single mother that they are appropriate parents.*

#### Scenario ii – Workplace communications

*An employee communicates daily, out of hours, via connected social media systems (work and private) to an LGBTIQ+ employee that they are praying for them every day that they will be made whole as a straight person.*

More importantly, it appears to us that this clause moves away from a principles-based discrimination law. Additionally, the use of the language 'unjustifiable hardship', which may have reasonable usage in say a Disability Discrimination Act (DDA), where there may be unjustifiable hardship for a company to say make alterations to a building. There is a clear principle at play here, it is our contention that use of unjustifiable hardship in the context of this Bill does not appropriately translate from say the DDA to the area of religious discrimination. Further, the concept in the DDA provides a minimum that an employer needs to establish to not respond to a discrimination action, whereas in this bill, the concept is somewhat flipped.

592 **Broader Health Care Concerns**

593 We express our serious concerns in relation to health care, not only of the LGBTIQ community, but  
594 also the broader community and particularly women, and people in regional and rural Australia.  
595 We offer a number of case studies on the inappropriate treatment of people by medical  
596 practitioners, which would become acceptable under these laws, which we find horrifying.

597 A limited number of examples we are concerned about are:

- 598 • The only doctor in a rural hospital refuses to provide PEP for a patient who is at risk of  
599 contracting HIV because they believe homosexual sex is a sin.
- 600 • To ensure they are not simply discriminating against transgender people, the only  
601 pharmacist in a rural town refuses to dispense any hormone medication to any patient,  
602 because they don't believe in the existence of transgender people and changing gender to  
603 resolve gender dysphoria is a sin.
- 604 • The only psychologist in town agrees to take on a bisexual patient on the basis that they  
605 are willing to submit to conversion therapy, which their professional association has stated  
606 is not acceptable therapy but meets their religious beliefs.
- 607 • The on-call midwife refusing to attend a birth because the child was created by IVF, which  
608 they see as against their religion.

609 While some classes of health practitioners have now been excluded from the protection of the  
610 proposed bills, the classes remaining are the most significant type of health practitioners for  
611 LGBTIQ people, women, the disabled etc. We are particularly concerned about the impact this will  
612 have on those in regional and rural areas.

613 Mr Latham in his second reading speech made special mention of medical practitioners who have  
614 had their licenced cancelled in relation to their treatment of LGBTIQ people. We should review  
615 some of those cases:

616 Case Study 5 – Doctor providing religious comments to young gay patient

617 *We understand that a doctor in NSW was counselled by the relevant professional*  
618 *body as the practitioner advised a young gay male patient that he should consider*  
619 *the Biblical position on sexuality, which had a significant negative impact on the*  
620 *patients already challenged mental health state.*

621 It is our understanding the practitioner's licence was not cancelled, and counselling in a first  
622 instance may be appropriate. There is a significant power in balance between a medical  
623 practitioner and their patients, and such comments are recognised as likely to be harmful.

624 Case Study 6 – Psychiatrist making religious judgment to vulnerable lesbian patient

625 *Experience of one of our members with their psychiatrist*

626 *As a 12 year old I knew I was gay but struggled in coming to terms with this. I*  
627 *reached out to family and school counsellors, only to be told it was a phase and*  
628 *most likely grow out of it.*

629 *I stopped telling people and reaching out to talk with people, my mental health*  
630 *suffered.*

631 *I became seriously depressed and constantly considered suicide at the young age*  
632 *of 14, along with inflicting low-level self-harm upon myself. My depression*  
633 *worsened and was sent to my local GP for help, which was appropriate, and she*  
634 *sent me to see a specialist youth psychiatrist, in the public health system.*

As a teenager I was utterly petrified, especially attending the appointment alone. I met with a young psychiatrist in training who at first was very friendly and bubbly, which helped me relax a little. Upon starting to discuss why I was there, I felt comfortable sharing that I was struggling with my sexuality and didn't know what to do.

Her demeanour immediately changed and became very serious. Without hesitation, she told me that being gay was wrong and God would disapprove of it. She also told me I needed to pray and ask God to make me better.

Being so young, I didn't know what to say or how to respond. I was upset that someone I thought was supposed to help, would say something like this. I was in such shock that I made another appointment, but unsurprisingly, never showed up for that. And I kept my sexuality hidden for another 6-7 years until I finally felt safe to be my genuine self.

#### Case Study 7 – HCCC successful complaint against doctors religious comments

The following case was prosecuted by the Health Care Complaints Commission (NSW) against Dr Alexander Anthony Sharah in 2015 resulting a decision by NCAT.<sup>xxxii</sup> For this case study we have simply extracted elements from the published decision and except to provide some context on the patient (as reported) have not provided any commentary.

“(1) The respondent is disqualified from being registered as a medical practitioner pursuant to s 149C (4) of the National Law.

(2) The respondent cannot re-apply for registration for at least a two year period from the date of the Tribunal's decision.

(3) The respondent is to pay the applicant's costs.”

“The applicant [HCCC] pressed the view that there was a public interest served by an allegation of this kind being resolved, and the public being informed, one way or the other, as to the appropriateness or otherwise of the practitioner's conduct. Adverse findings on an issue of this kind might bear on the gravity of the disciplinary finding, and the nature of a disciplinary order. The applicant added that in the present case, any period of time set by way of disqualification from reapplying to enter practice would be likely to be affected by any adverse finding on a matter of this kind.”

#### Patient A – A Lesbian Patient with Attention Deficit Hyperactivity Disorder

“We will set out the response of the respondent to each of the sub-particulars below, based on our summaries of the evidence at hearing and the subsequent written submissions (which included references to the transcript).

1. Between approximately 2004 and 2013 the practitioner during consultations gave inappropriate religious advice to Patient A, which was uninvited, in that he said on multiple occasions words to the effect ‘you have to pray’.

2. During a consultation when Patient A reported that she had a lesbian friend who started to pray, the practitioner made the following inappropriate comments with the words to the effect of:

(a) “lesbians don't know that they are doing something wrong so we still have to love them”;

(b) “it's the same as paedophiles, they don't know they are doing something wrong

so we still have to love them”.

3. In January 2013 during a consultation with Patient A, the practitioner failed to observe appropriate professional boundaries in that he:  
(c) advised her to continue to pray to God.

#### *Findings in relation to Patient A*

In relation to Particulars 1 and 2, Patient A’s evidence at hearing was consistent with her statement, and reasonably precise. The respondent accepted that he may have made the statements attributed to them. We find both Particulars proven.

It was professionally inappropriate to suggest in a treatment setting of the kind described that a solution might be found in frequent praying (Particular 1). Similarly it was professionally inappropriate to make gratuitous remarks about lesbians, and then to compare lesbian relationships to the conduct in which paedophiles engage (Particular 2). Comments of this kind go well beyond comments of a light, social kind that are not unusual in the consultation environment.

Particular 3 refers to the incident relating to the tattoo. Particular 3(c) is another instance of a comment invoking the power of prayer, similar to Particular 1. For the same reasons, we find it proven.”

Patient B – Female with depression and seeking assistance after being discharged from an alcohol detoxification program

“Particular 7 is:

On 5 September 2013 the practitioner during a consultation gave inappropriate religious advice to Patient B, which was uninvited, when he said words to the effect of:

- (a) ‘Jesus hates you’;
- (b) ‘don’t cry, Jesus Christ drank, you don’t need any medication’;
- (c) ‘this is your medication’, after handing Patient B a cross;
- (d) ‘I want you to go to church tonight. Make time to go to church’;
- (e) If she connects with Jesus she will feel better;
- (f) she should see a priest and tell the priest she wants to confess;
- (g) if she didn’t go to church and show Jesus that she loved him, she would end up in hell with her former husband and her slut of a mother;
- (h) if she prayed to Jesus she would end up in heaven one day with the practitioner playing football.

The respondent admitted the making of the statements particularised at (d) to (h). He formally denied the statements at (a) to (c), but admitted the giving of the cross to the patient. As noted earlier, Patient B’s statement was precise and detailed. She lodged her formal complaint with the Commission three weeks later (on 26 September 2013) and signed her statement a few weeks’ after that, on 30 October 2013. Her statement was not contested. At hearing the respondent gave a detailed account as to what transpired. He denied making the comments the subject of sub-particulars (a) to (c). In these circumstances, we find those aspects of particulars (a) to (c) not proven. Accordingly, we find sub-particular (c) proven in relation to the handing over of a cross, and find sub-particulars (d) to (h) proven. We find the remarks proven were inappropriate and uninvited.”

Patient C – A Muslim patient referred by her GP for opinion and management

*“11. On or around 5 December 2012 at a consultation with Patient C, the practitioner made inappropriate religious gestures in that he:*  
*(a) used holy water to draw the sign of a cross on Patient C’s forehead;*  
*(b) prayed over Patient C on at least one occasion;*  
*(c) did (a) and/or (b), above, with the knowledge that Patient C was Muslim.*

*We will deal with the three Particulars together. The respondent admitted using the words attributed to him in Particular 9(a), and initially denied using the words set out in Particular 9(b). However in evidence his evidence was that he may have said something like this, but with a broader context than appears in the allegation. He thought that he would have said that there was nothing wrong with her sufficient for her to be classed as disabled.*

*The issue is whether the words used constituted inappropriate comments in a professional setting.”*

*....*  
*As to Particular 11, the respondent admitted (a), denied (b) (praying over the Patient) and admitted that he knew she was Muslim ((c)). We find particular (a) proven. As to particular (b), there is a similar conflict in the evidence to the one we have just discussed in relation to Particular 10(b). For the same reasons, we accept the patient’s account.*

*Clearly the conduct to which Particular 11 refers (the use of religious gestures) was inappropriate and was magnified in its inappropriateness, when the patient was an adherent of a non-Christian faith....”*

*Patient D – A women having had a still born child induced at 22 weeks, diagnosed with Hypoplastic Left Heart Syndrome, then suffering Post Traumatic Stress Disorder (PTSD) and was having suicidal thoughts.*

*“Patient D, a woman who was about 31 years of age at the relevant times, consulted with the respondent on 4 July 2013 and 11 July 2013. In December 2012 her unborn child had been diagnosed with Hypoplastic Left Heart Syndrome. She and her husband decided to induce labour at 22 weeks and the child was stillborn. As a result, she developed Post Traumatic Stress Disorder (PTSD) and was having suicidal thoughts. She was referred to the respondent. At the time she was taking a medication, Duromine, to help her lose weight. The respondent was informed of these matters, most notably the circumstances surrounding the loss of her baby.*

*It will be seen that the first two Particulars that follow again deal with acts or conduct with religious connotations. The final particular, Particular 14 deals with clinical competence. All of the particulars were admitted. The events are the subject of a witness statement dated 24 October 2014, and elaborate on the complaint made online by Patient D a few days after the second consultation, on 17 July 2013.*

*12. At a consultation on 4 July 2013 the practitioner gave inappropriate religious advice to Patient D, which was uninvited, when he said words to the effect of:*  
*(a) ‘God can help you’;*  
*(b) ‘God is love’.*  
*13 At a consultation on 11 July 2013 the practitioner gave inappropriate religious advice to Patient D, which was uninvited, when he said words to the effect of:*  
*(a) ‘God was love, so love was important’;*  
*(b) her son was God’s will;*  
*(c) she ask for God’s forgiveness for her son’s death.*

*.....*



We find each of the Particulars proven in respect of all their elements. We draw attention to the following part of the patient's witness statement for their account of the emotional impact of the respondent's conduct.

'After the first consultation I felt extremely uncomfortable, he had continuously brought up religion. I am not religious in any way, but I was too vulnerable and absolutely petrified of the terrible place I was in emotionally to say anything. He also kept using words like 'abortion' and 'termination', which absolutely mortified me, as that was not what we did to our baby boy. To hear these abhorrent words made me sick to my stomach'

She made a similar statement about feelings of revulsion after the second consultation:

'After the appointment, I was in a state of shock. I was shaking, I couldn't breathe. I texted my parents regarding what happened and called my husband in an extreme emotional state.'

In his report Professor Greenwood observed that the respondent had no right to impose his own religious beliefs on the patient. He noted that religious belief is specifically excluded from a psychiatric diagnosis under the NSW Mental Health Act (s 68(g) and Sched 1, cl 16(1)(b)). He commented as to the matters the subject of Particular 14, that no adequate management plan was put in place. The respondent, he considered, missed completely a PTSD diagnosis. His instruction to her to eat sensibly and to exercise was very inadequate response to her distress. His notes did not reveal any satisfactory mental examination. There should have been a risk assessment in circumstances where she was seriously distressed."

Patient G – Female having been being diagnosed with depression and anxiety

"This case was added to the proceedings after the original application was filed, and was added as part of the amendments that make up the amended complaint. Volume 3 of the applicant's bundle deals with the case. It derives from a letter of complaint from Patient G, a woman born in 1960, dated 30 April 2014. There is also a statement made 26 June 2014. She was referred to the respondent for psychiatric treatment after being diagnosed with depression and anxiety. The Medicare records show nine consultations over the period December 2012 to August 2013.

It will be seen that there are four Particulars, many with sub-particulars. It will be seen that the first three refer to remarks by him that are said to be inappropriate. As in a number of the cases already traversed they relate to religious matters (Particular 18, Particular 19) and comments of a personally offensive nature (Particular 20). The final particular, Particular 21, goes to competence.

18. During consultations between 12 August 2012 and 15 August 2013, the practitioner gave inappropriate religious advice to Patient G, which was uninvited, when:

- (a) on more than one occasion he said words to the effect of 'you need to think more about where you are heading and to let Jesus into your life'; and
- (b) he said words to the effect of 'you should join the church';
- (c) he recommended that Patient G should read a particular book about miracles;
- (d) he said words to the effect of 'what do you have to be scared of? You should be looking forward to the kingdom of heaven' during a discussion about Patient G's fear of illness and death;
- (e) he said words to the effect of 'once you get to heaven you can have a little dress shop on a cloud' during a discussion about Patient G's fear of illness and death.



19. During consultations between 12 August 2012 and 15 August 2013, the practitioner, inappropriately and without medical or psychiatric justification:  
 (a) discussed religion with Patient G at every consultation including after Patient G had made it clear to the practitioner that she did not want to discuss religion during consultations;  
 (b) discussed his experience of bringing Jesus into his life with Patient G;  
 (c) gave Patient G a small cross;  
 (d) recommended that Patient G disregard public information surrounding the Royal Commission into Institutional Responses to Child Sexual Abuse and the Catholic Church.

The respondent, admitted in whole, Particulars 18, 20 and 21. He admitted (b), (c) and (d) of Particular 19, and with a qualification, he admitted item (a) of Particular 19. His qualification was that the she did not make her lack of interest clear at 'at every consultation'. This aspect of the allegation reflects words used by the patient in her original complaint to the applicant, where she said: 'on every occasion I was told to accept Jesus into my life and pray, join a church group, disregard news events discrediting the catholic church'. He acknowledged that she did, over time, make it clear to him that she was not that interested in religious perspectives on her condition.

Particular 21 is supported by a report from Professor Greenwood dated 15 August 2014.

We find all particulars proven. We prefer the patient's account on the one factual matter debated by the respondent, the matter of whether he engaged in the unwanted communications every time he saw the patient. We find that he did. It is plain, we consider, from the evidence generally, that the respondent had a way of interacting with his patients which made routine references to religion and the role religious belief and practices might play in obtaining alleviation or cure of their conditions."

The proposed legislation will remove the power of the Health Professional Councils to establish standards of care for patients, in relation to religious interference into medical and other health consultations, significantly put at increased risk patients.

It is important to remember that in this case as an example, the matter was not only considered by the Medical Council of NSW, but also the Health Care Complaints Commission as an independent investigator and prosecutor. The matter was finally heard in NCAT which would have had a legal, medical and community member hearing the matter.

We don't believe the public would believe this sort of approach by a medical practitioner would be acceptable. We would ask the Committee to consider if they are of the view that such actions by the medical practitioner are acceptable?

In Victoria a Medical Practitioner was suspended by the Medical Board of Victoria,

#### Case Study 8 – VCAT Decision - Jereth Kok V Medical Board of Victoria<sup>xxxiii</sup>

"On 22 August 2019, the Medical Board of Australia, ("the Board") decided to take immediate action under section 156(1)(e) of the Health Practitioner Regulation National Law Act 2009 ("the National Law"), to suspend Dr Jereth Kok's registration."

*"In its reasons for decision, the Board said the information before the Board is evidence that Dr Kok publishes comments on social media/internet forums that include but are not limited to:*

*(a) Denigrating, demeaning and slurring medical practitioners who:*

*(i) Provide terminations of pregnancy services;*

*(ii) Recognise and treat gender dysphoria in a manner that is in accordance with accepted medical practice; and*

*(iii) Recognise that people who identify as transgender, are not suffering from a mental health condition.*

*(b) Sentiments of violence:*

*(i) Endorsing / calling for violence and/or genocide toward racial and religious groups; and*

*(ii) Endorsing calls for capital punishment for members of the profession who provide terminations of pregnancy services;*

*(c) Commentary expressing and encouraging views regarding LGBTIQ persons that:*

*(i) has no proper clinical basis and is contrary to accepted medical practice, and/or*

*(ii) is otherwise demeaning."*

*Mr Koh appealed the decision in VCAT in a hearing held on 28 February 2020, decision published on 27 March 2020.*

*The members noted:*

*"We accept that many of Dr Kok's posts could, arguably, be viewed as (acceptable) social commentary/debate. There is no doubt that he sometimes engages in lengthy, articulate and considered discussion.*

*Other posts, whether social commentary/debate or not, most certainly have the real potential to cause concern/offence to a range of members of the community including (but not limited to) women seeking abortions, other health practitioners and the hospitals/practices in which they work, multiple named races, and members of the LGBTIQ+ communities."*

*In their discussion of the question Do we reasonably believe that action is otherwise in the public interest? The members considered numerous factors, including:*

*"Dr Kok has however, as a member of the medical profession, obligations to his profession and to those served by the medical profession.*

*We have formed the reasonable belief arising from his social media posts that "action is otherwise in the public interest" for the following reasons.*

*Dr Kok accepts that he has posted comments on social media that have the potential to offend.*

Although, as we have already discussed, we recognise the breadth of Dr Kok's social media postings, we consider that some of his posts do appear to go further than simply having the potential to offend.

Some of the posts on a simple reading of them, arguably denigrate, demean and slur medical practitioners who provide termination of pregnancies, recognise and treat gender dysphoria (in a manner that is in accordance with accepted medical practice) and recognise that people who identify as transgender are not suffering from a mental health condition. Some of the posts, particularly read in isolation, do appear to endorse or call for violence and/or genocide towards racial and religious groups and endorse calls for capital punishment for members of the profession who provide termination of pregnancy services. Some of the posts do arguably express demeaning views regarding LGBTQI+ individuals. ....

We raise similar concerns with respect to posts which on their face engage in racial slurring of members of the community. A reader may readily be left with the impression from such posts that the medical profession has members who have strong views against individuals based on their ethnicity. This too has the potential to harm the reputation of the medical profession. We repeat these comments in relation to Dr Kok's posts referencing members of the LGBTQI+ community. ....

Dr Kok is however a medical practitioner. He is by virtue of his profession required to abide by a Code of Conduct which requires respect and compassion. He has obligations to his profession which he must take seriously. He does not simply drop his profession each time he enters the playground of social media engagement. A registered medical practitioner cannot go online and shout to all who care to read his posts (or have the misfortune of coming across his posts) without care as to the potential consequences of his actions. ....

We are satisfied that such posts have the real potential to undermine public confidence in the provision of services by health professionals. There is a real likelihood that the maintenance of the standards of the medical profession will be undermined by such posts, particularly when posted by a registered medical practitioner. The reputation of the profession is thereby impacted. ....

We have grave concerns about whether the community would accept that any medical practitioner could switch, as though he were a light, from airing disrespectful views online to providing respectful and appropriate treatment for those who fall within a class he denigrates online. ....

We consider that public confidence in the medical profession and the willingness of (some) members of the public to seek appropriate treatment would be significantly undermined if Dr Kok were permitted to continue to practice even with conditions pertaining to his use of social media."

The decision to suspend the practitioner was confirmed.

Under the proposed legislation these professional standards could not be able to be maintained in NSW, as the post were "outside of working hours" or a "religious viewpoint". We do not believe that that position is acceptable.

There is a case of a medical practitioner, who if they had not left the country, would have been suspended by NCAT for two years for their treatment of a transgender patient, however that case was purely based on clinical matters and not religious views or related issues. Another medical practitioner was reprimanded for poor clinical treatment of another transgender patient<sup>xxxiv</sup>.

Case Study 9 – Recent Italian case of Doctor providing Gay Conversion Material

The following has been reported in relation to a doctor in Italy<sup>xxxv</sup>:

“In Verona, Italy, a woman received advice from her general practitioner to cure her of homosexuality through books. The woman, who remains anonymous, sent a letter to *MaiMa.Online*, explaining what the doctor told her during the consultation and what books the doctor “prescribed”.

The prescription given by the GP is certainly not what anyone would expect from a professional doctor. The GP told the woman that she was pleased she had disclosed her sexual orientation but said she already suspected it “because of her short haircut”.

The GP’s treatment plan included an autobiography by an “ex-gay” Italian celebrity. ....

This woman didn’t follow the GP’s advice, but she claims that there is at least one other homosexual patient that she knows of who might have followed the doctor’s suggestion. ....

Conversion therapy survivors found that 68.7% of respondents with mental health issues have had suicidal thoughts, while 32.4% have attempted suicide.”

Scenario iii – Young gay man in rural location seeking PreP

A gay young man in a rural location with only one pharmacy has been prescribed PreP (a medication to prevent HIV infection) is denied having his prescription filled as the Pharmacist holds religious beliefs that prescribing such medication is supporting a legal sexual activity that is against their religious beliefs. Due to the difficulties of obtaining PreP, the young man ultimately becomes HIV+ where if he had access to PreP such infection is highly likely to have been avoided.

Scenario iv – Women seeking “morning after pill” in remote location

A young woman who has been raped attends a remote hospital facility that is only has minimal medical staff and the doctor and the pharmacist on duty refused to provide the “morning after pill” as it is against their religious belief to prescribe the medication.

Scenario v – Travelling transgender person requiring hormones

A transgender person is travelling around Australia and traversing NSW for an extensive period of time, and their endocrinologist has provided documentation as to their treatment plan and their hormone medication regime. As they travel they have severe difficulties in obtaining their hormones as in one rural location, the only doctor available refused to prescribe the hormones, and in another the only available pharmacist refuses dispense the prescribed hormones as ‘God made humanity male and female, and, in his creative purposes, biological (bodily) sex determines gender’, and her faith calls on her to ‘differentiate between compassion for the person and understanding the distress of their situation/condition and agreeing with and validating a treatment protocol to transition’<sup>xxxvi</sup>. This has a real and significant impact on the transgender persons wellbeing.

991 More broadly, we are concerned that the breadth of this proposed clause provides a principle for  
992 the broadening of such a clause in the future, that would allow any person, based on their religious  
993 beliefs to refuse to provide goods and services to a person outside of a religious organisation.

994 As a community we would be very distressed should the “American style Religious Freedom”  
995 principles be imported to Australia, where there is a significant push to allow religious persons to  
996 be legally allowed to refuse to provide goods and services to any other person based on their  
997 religious beliefs. This would not only directly and severely negatively impact the LGBTIQ+  
998 community, but has the potential to impact women, people of other races and or religions, people  
999 of disabilities etc.

1000 A key question for the Committee is do they feel that the actions taken by the respective health  
1001 professional bodies should be seen as acceptable on religious grounds? We content they should  
1002 not and that the current standards of professional practice do balance the rights of the patients and  
1003 the health practitioners and do necessarily favour the patient (and public).

1004 We do not see any basis for this limitation in the provision of professionally and medically  
1005 appropriate health care, and clauses related to health care and professional standards should be  
1006 removed.

1007 In the event that the Committee were to recommend the lowering of health professional care in  
1008 favour of religious beliefs (which we do not accept), then the following should be considered as  
1009 mandatory minimum standards:

1010 *a) A health practitioner who holds religious belief conscientious objection to the provision of*  
1011 *health services, a registered health practitioner is under a duty to perform all medical*  
1012 *services in an emergency where it is necessary to preserve the life of the person or to*  
1013 *prevent any significant harm.*

1014 *b) A health practitioner who holds religious belief conscientious objection to the provision of*  
1015 *certain services or to the provision of services to person, must provide the services if there*  
1016 *is no alternative health practitioner reasonably located to or accessible by the patient.*

1017 *c) A health practitioner who holds religious belief conscientious objection to the provision of*  
1018 *certain services or to the provision of services to person, must provide a referral to an*  
1019 *alternative health practitioner that is reasonably located to and accessible to the patient.*

1020 *d) A health practitioner who holds religious belief conscientious objection to the provision of*  
1021 *certain services or to the provision of services to persons, must advise every patient at the*  
1022 *time of an appointment or being put on a patient list, of any limitation to the services that*  
1023 *they will provide. [This will permit the patient to seek an appointment with another*  
1024 *practitioner and avoid potential costs resulting from attending a health professional*  
1025 *appointment only to not have the services provided]*

1026 *e) That this Act does not permit health practitioners to provide religious based comments to*  
1027 *patients as part of their consultation.*

1028 We have focused primarily on medical practitioners, in this submission, however the same  
1029 principles apply to all other health practitioners, and also other professional practitioners, such as  
1030 lawyers, barristers etc.

1031 **Religious Bodies – Corporate Entities**

1032 We believe there are significant issues with this concept within the proposed Bill.

1033 Firstly, it is usual that discrimination acts are to protect a natural person and not a “non-natural  
1034 person” such as an organisation. We are not aware of any other discrimination act in Australia that  
1035 allows a “non-natural person” or corporate entity to take discrimination action.

1036 A religious organisation is made up of individuals who themselves can be discriminated against on  
1037 the basis of their religion, however a non-natural person cannot have a religious belief.

1038 We strongly urge that in reviewing the proposed legislation that the concept of discrimination  
1039 against a non-natural person be removed.

1040 There are inadequate definitions to define what is a religious body, or a religious belief, and it  
1041 seems that in the legislation a religious belief is self-determined.

1042 There are competing challenges between what a religious body might consider appropriate and the  
1043 impact on another person, which may have a significant negative impact on that person.

1044 Case Study 10 – Gay Conversation Therapy

1045 *Some State and Territory have commenced the process to outlaw Gay*  
1046 *Conversation Therapy. We believe that NSW should follow suit urgently.*

1047 *At the Sydney Anglican Diocese Synod 2018 their records so that<sup>xxxvii</sup>:*

1048 *“(d) notes that the Anglican Church in the Diocese of Sydney does not practise,*  
1049 *recommend or endorse ‘gay conversion therapy’” and later:*

1050 *“(g) values prayer for same-sex attracted Christians who wish to live celibate lives,*  
1051 *noting that prayer is not a form of “gay conversion therapy”.*

1052 *The challenge is when a religious body defines gay conversion therapy, rather than*  
1053 *those that suffer from such therapy, many would argue that the act of “strongly*  
1054 *encouraged prayer to remain acceptable to the religious body is in itself a form of*  
1055 *gay conversion therapy and therefore a form of abuse that most reputable health*  
1056 *professional bodies in Australia and around the world reject and confirm are harmful*  
1057 *to the recipient.*

1058 There has been considerable commentary particularly in The Australian over the last year around  
1059 people with Gender Dysphoria. Interestingly the series received a “GLORIA Award in 2019 (“The  
1060 GLORIAS is a fun event that shines a light on outrageous, ignorant and plainly ridiculous public  
1061 comments made about lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) people in  
1062 our community every day.”<sup>xxxviii</sup>). Unfortunately, whilst the main peak medical bodies have  
1063 supportive approaches to people with Gender Dysphoria and there the “Australian Standards of  
1064 Care and Treatment Guidelines for trans and gender diverse children and adolescents”<sup>xxxix</sup>,  
1065 publications such as The Australian have taken it upon themselves to deride transgender youth.  
1066 Rejection of good medical practices can lead to harm of young people and we see the processes  
1067 of harm supported by some religious organisations.

1068

Case Study 11 – Transgender Conversion Therapy.

At the Sydney Anglican Diocese Synod 2019, a paper was presented and supported around “Gender Identity Initial Principles of Engagement 24/17 Development of a final form of diocesan policy for gender identity issues”<sup>xl</sup>

“9.1.2 Those experiencing gender incongruence You are made in the image of God and you will find your identity in Christ. Therefore, we encourage you:

(a) to seek treatment options that aim for the integrity of psycho-somatic unity;”  
[comment – in an earlier note to this section “9.1.1 (g) The human person is a psychosomatic unity, where body and soul come into being at the same time and, in this life and the next, exist together. Embodiment is integral to human identity, and biological sex is a fundamental aspect of embodiment. Preserving the integrity of body and soul, and honouring and protecting the biologically-sexed body that God has given are necessary for human flourishing” – essentially this is calling for the person to undergo counselling to remain in their birth biological sex, which is most likely to be harmful to the person]

“9.1.3 Family and Friends of those experiencing gender incongruence

(e) if appropriate, to provide information about alternative treatment approaches to those which promote transitioning; “

[Comment: alternative treatment approaches effectively is a form of conversion therapy]

“9.1.4 Christian parents Christian parents are encouraged:

(d) to seek mature Christian counsel and pastoral care if your child has gender identity issues that cause you concern, and seek to support the child in their biological sex role”

[Comment: the Church is encouraging parents to engage their children in conversion therapy.]

“9.1.5 Counsellors, teachers, doctors (those with secular professional relationships) Christian professionals are encouraged:

(d) to differentiate between compassion for the person and understanding the distress of their situation/condition and agreeing with and validating a treatment protocol to transition; and

(e) to build support networks for consultation, possibly including legal contacts.”

[Comment: the Church is encouraging Counsellors, teachers, doctors etc to encourage transgender person to undergo conversion therapy]

“9.1.8 Public engagement

(f) to be informed about the different dimensions of the public debate, as there are those who promote transgender ideology, and those who suffer from gender incongruence, who are vulnerable members of our community, yet the needs and claims of the two groups are different, and must be considered in any public engagement on these matters; “

[Comment: the Church is calling a class of citizens an ideology, where their existence and the basis for their existence is well documented socially and medically, this is a form of vilification]

*The proposed bill may provide protection to the religious body from State and Territories bills to outlaw those practices. Whilst the bill does not allow religious practices that are criminal in nature, if a State or Territory outlawed such practices through health legislation, then this Commonwealth Bill may override that State or Territory Act.*

1117 We wish to clearly remind the Committee and Government that minors are largely in religious  
1118 organisations or religious educational bodies without choice of their own. We acknowledge parents'  
1119 rights and their obligations of their duty of care to their children but so does the state. The state  
1120 shares responsibility for minors to ensure in part the overall safety of children and the provision of  
1121 an acceptable standard of care and education in accordance with broad community standards.

1122 As evidenced by the above case studies, some religious bodies are strongly advocating against  
1123 LGBTIQ+ people, in some cases their existence, and their rights. Some religious organisations  
1124 claim that non-binary gender expression is a myth, a fad or a secular ideology. Regrettably, some  
1125 religious organisations expressly reject mainstream medical and scientific evidence concerning  
1126 gender dysphoria.

1127 So, the question here is the issue of competing rights, and also the evidence of medicine and  
1128 scientific methods over beliefs.

1129 We refer to the "Convention on the Rights of the Child"<sup>xli</sup>, and ask the Committee to consider the  
1130 following articles:

- 1131 • Article 6 (1) "recognize that every child has the inherent right to life" recognising that  
1132 LGBTIQ+ people have a significantly higher rate of suicide, with transgender people having  
1133 some of the highest rates of suicidality in Australia
- 1134 • Article 8 (1) "undertake to respect the right of the child to preserve his or her identity" that  
1135 being LGBTIQ+ is part of a child's identity
- 1136 • Article 19 (1) "shall take all appropriate legislative, administrative, social and educational  
1137 measures to protect the child from all forms of physical or mental violence, injury or abuse,  
1138 neglect or negligent treatment, maltreatment or exploitation, including sexual abuse".  
1139 Forcing, or strongly encouraging a child so that they are acceptable to others to undergo  
1140 conversion therapies is a form of physical and mental violence and abuse, and by the  
1141 practitioners/counsellors/religious person negligent treatment.
- 1142 • Article 24 (1) "recognize the right of the child to the enjoyment of the highest attainable  
1143 standard of health" infers that children should not be subject to health standards that are  
1144 not of the highest order as recognised by health professional bodies.
- 1145 • Article 37 (a) "No child shall be subjected to torture or other cruel, inhuman or degrading  
1146 treatment or punishment." Processes of conversion therapy can be contemplated as  
1147 torture, cruel, inhumane and degrading treatments.

1148 Further, we have a broader concern in relation to services that a religious body may provide,  
1149 particularly if it received any funding directly or indirectly from any Federal, State/Territory or Local  
1150 Governments. As examples:

- 1151 • An age care facility rejecting an LGBTIQ+ couple from cohabitating in a organisation's  
1152 facility.
- 1153 • A government funded foster care agency refusing to consider any of the following persons  
1154 as suitable for the provision of foster care services; a single person; a single parent, a  
1155 couple in a defacto relationship, a married couple not married in a religious institution and  
1156 LGBTIQ+ couple
- 1157 • A government funded adoption agency refusing to consider any of the following persons as  
1158 suitable as adoptive parents; a single person; a single parent, a couple in a defacto  
1159 relationship, a married couple not married in a religious institution and LGBTIQ+ couple.



- A hospital refusing to treat a person based on their sexual orientation, gender, marital status etc.

It is our view that the proposed bill should not permit religious organisation the ability to undertake activities that may lead to harm to an individual.

Further, we acknowledge and support the importance of religious organisations and not for profit organisations, and fully support the service delivery of organisations within the Uniting Church, such as Uniting.

In the broadest context, these organisations run schools, hospitals, welfare organisations and employment agencies. We note that this sector is a very significant employer of a people across Australia, not only in urban communities but also in rural and regional places. Often services that are run by the Uniting Church are in poorer socio-economic areas. Many of these organisations receive a significant amount of public funding to provide the services to the wider community.

We do not believe it is appropriate for such organisations to undertake what would otherwise be considered unlawful discrimination that would have significant negative implications not only for those who require the services, but also in the area of employment.

It is our observation, that the drafts legislation provides an extensive set of protections against religious discrimination in the areas of public life, that is, this act goes beyond the concept of a shield, and provides religious organisations with a sword of positive discrimination outside of their direct religious activities into the provision of public services, often significantly government funded.

Further, it is proposed that a State or Local Government could release a tender for the provision of services, and state that no one should be excluded from receiving the services, and a religious organisation may claim that such a tender is a form of religious discrimination and take action against another level of government under this legislation. We believe this is unacceptable in a modern inclusive society.

Further, it is a regret that we need to revisit the Royal Commission into Institutional Child Sexual Abuse, and the consequences on the lives of thousands of young Australians over decades. It was clearly identified through the Royal Commission that the Royal Commission noted that the unusual nature of religious institutions could provide ‘heightened risks’, including that they often operate with ‘closed governance’ and ‘complicated legal structures’.<sup>xlii</sup>

There has for centuries a significant power position that religious originations have maintained in society, probably more power than they have earned or deserved. Through the Royal Commission, it was self-evident that religious institutions failed to protect the rights of individuals which been acknowledged by some religious leaders. As an example, at the Royal Commission, Catholic Archbishop Coleridge provided the follow evidence.<sup>xliii</sup>

*“If I could put it in these terms, they were invariably company men, and that had both good and bad aspects about it, I suspect, but they were more interested in the institution than in the individual...So they [religious leaders] had this passionate, lifelong commitment to the defence and promotion of the institution, and it made them blind to individuals.”*

Consequently, to the Royal Commission, many State and Territory Governments have created laws to require disclosure of child abuse by all including religious personnel. However, a number of religious organisations have stated that they are willing to defy State and Territory laws for their own religious tenants.<sup>xliv</sup> That is to say they have a preference to protecting their own religious views/practises than the protection of children.

In summary, we hold the view that discrimination laws should only apply to a “natural person”, consistent with other discrimination laws in Australia and international norms in this area.

1205 **Power**

1206 In the Australian context, the Churches have swayed considerable power, and their power in many  
1207 cases comes from significant wealth granted them by earlier colonial governments.

1208 Churches have historically had a strong level of influence or control over governments, and also  
1209 society.

1210 However, in many cases, Churches have failed society, most recently seen with the tragedy of the  
1211 Royal Commission into Institutional Sexual Abuse. As the recommendations of that Royal  
1212 Commission are being put into place, some Churches see themselves above the government and  
1213 have already outlined in many states in Australia they would break the proposed (or passed) laws  
1214 intended to protect children.

1215 They see their own power as more important than that of the people and society.

1216 The same is true for the LGBTIQ Community. Prior to 1946, the word homosexual did not exist in  
1217 the English translations of the Bible, and current research is clearly showing that its introduction  
1218 was an academic translational error. In many other languages of the Bible, similar texts refer to  
1219 pederasty and the like. Concepts of traditional marriage is often pushed by religious groups, and  
1220 yet when the Bible is extensively explored, there are all sorts of marriages and requirements to  
1221 marry, and many of those marriages were about power.

1222 Religious leaders have historically been able to speak without challenge, but in the modern world,  
1223 where there is more knowledge and information, religious leaders are having to learn the art of  
1224 persuasion. In many cases, they are failing, often because people in society are seeing many  
1225 religious leaders being about their personal power, the power of their community over everyone  
1226 else.

1227 Regrettably, this proposed legislation is about providing religious people and religious  
1228 organisations unprecedented power over all other people, when there is no real justification for it.

1229 If they were serious about their need to discriminate against others, they ought to be willing to do  
1230 so without any taxpayer funding, but they are unwilling to do so.

1231 This legislation is not about protecting religious people from discrimination, this is primarily about  
1232 providing a particular class of citizens the absolute power to discriminate, abuse, intimidate and/or  
1233 harass others with immunity. That is not anti-discrimination, this is a piece of discriminatory  
1234 legislation. This is creating a system of religious apartheid in NSW.

1235 **5. SUMMARY**

1236 As a small, not-for-profit Christian community organisation, we do not have access to all the  
1237 resources needed to fully respond to the legal complexity of these pieces of legislation. The  
1238 approach taken by parliaments is an unfair burden on small groups that are minorities in our  
1239 society, and potentially the most significant victims of this type of legislation.

1240 The LGBTIQ+ community is one of the communities that will be negatively impacted by the  
1241 legislation.

1242 Such legislation should be a shield and not a sword. We have attempted to outline our concerns  
1243 as there are unintended swords within the drafting, not only for the LGBTIQ+ community but also  
1244 for other members of the NSW population. On an initial read we see some potential impacts to the  
1245 current protections for LGBTIQ+ people, people with disabilities, Indigenous people, Culturally and  
1246 Linguistically Diverse people and women.

1247 Further, the LGBTIQ+ community is still struggling significantly with the consequences of the  
1248 marriage equality postal survey process. As a community we do not have the financial resources to  
1249 obtain all the legal advice required to analyse and comment upon the all of the complexity and  
1250 interrelationship of the various pieces of legislation. This current matter comes on top of the  
1251 Federal Government's similarly proposed legislation which was also reject, and for us in Uniting  
1252 Network after a difficult meeting of the national Assembly of the Uniting Church in 2018, which  
1253 ultimately allow the option of two person marriage within the denomination.

1254 Accordingly, we call on the Committee to recommend to the leaders of both Houses to cease with  
1255 the progression of this Bills and for the Government to engage in serious and meaningful  
1256 consultation with the NSW community on a Bill of Human Rights.

1257 Former Senator Greig was right, the proposed Bill is nothing more that the creation of a system of  
1258 religious apartheid in NSW, and as per the ILGA World report, this Bill establish a system of State  
1259 Sponsored Homophobia, Biphobia, Transphobia and more within NSW.

1260 All of this we find unacceptable.

## Endnotes

- <sup>i</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25198&LangID=E> (sourced 26 January 2020)
- <sup>ii</sup> <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p?query=Id%3A%22chamber%2Fhansards%2F1999-09-01%2F0049%22> (sourced 27 January 2020)
- <sup>iii</sup> [https://en.wikipedia.org/wiki/Brian\\_Greig](https://en.wikipedia.org/wiki/Brian_Greig) (Sourced 27 January 2020)
- <sup>iv</sup> <https://ilga.org/state-sponsored-homophobia-report> (sourced 27 January 2020)
- <sup>v</sup> IBID pages 27 and 28
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- <sup>xvii</sup> Ibid
- <sup>xviii</sup> Ibid., p.130.
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