

**REPORT ON PROCEEDINGS BEFORE THE**

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

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

**At Macquarie Room, Parliament House, Sydney, on Friday 23 October 2020**

**The Committee met at 9:05.**

**PRESENT**

The Hon. Gabrielle Upton (Chair)

**Legislative Council**

The Hon. Greg Donnelly  
The Hon. Scott Farlow  
The Hon. Mark Latham

**Legislative Assembly**

Mr Jihad Dib  
Mr Alex Greenwich  
Ms Jenny Leong  
Mr Paul Lynch (Deputy Chair)  
Dr Joe McGirr  
Ms Tania Mihailuk  
Ms Robyn Preston

**PRESENT VIA VIDEOCONFERENCE**

The Hon. Catherine Cusack



**The CHAIR:** Good morning to you all. Thank you for coming along today. Before we start, I want to acknowledge the traditional custodians of the land on which we meet today and pay my respects to Elders past and present. Today is the first public hearing date for the Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020. I want to warmly welcome you and thank you for taking the time to attend today. We are being broadcast to the public via the Parliament's website. The majority of our witnesses will be attending in person; we do have some witnesses later in the day who are attending via videoconference.

I want to make opening remarks about the spirit in which we are hosting the hearing today in Parliament. We will be encountering some issues about which people and witnesses will have some strong views. The spirit in which we have met has, to this point, been one which has been respectful and open to views. Indeed, these hearings are about hearing all the views, whether or not we as members of the Committee may agree with them. This is not the place for that. In fact, the process of the committee hearing is to take as much evidence as we can for us to then consider. The approach I am taking today is to enable witnesses to do most of the talking. We are going to be courteous and respectful.

**A. KEITH THOMPSON**, Associate Dean, School of Law, Sydney, University of Notre Dame Australia, sworn and examined

**MICHAEL QUINLAN**, Dean, School of Law, Sydney, University of Notre Dame Australia, sworn and examined

**MICHAEL CASEY**, Director, PM Glynn Institute, Australian Catholic University, sworn and examined

**BERNADETTE TOBIN**, Director, Plunkett Centre for Ethics, Australian Catholic University, sworn and examined

**The CHAIR:** Welcome to our first witness panel. We are going to go directly to questions from the members of the Committee. There will not be any opening statements. We are going to conduct the hearing so that each member of the Committee has an opportunity to ask a question. They are limited to five minutes, give or take, to allow you to finish sentences. Some members may elect not to ask a question when we go around. If that is the case, it means we will have some reserve time at the end, where members who want to ask additional questions or have given their go over will have a chance to ask further questions. There might be some questions you want to take on notice, which we can come back to. I apologise in advance, but you can imagine that we have a tight hearing and lots of questions. You will hear a bell at around four minutes, just to give you an idea that we are close to the five-minute allocation. We are looking forward to hearing from you today. Are there any further questions about how we will run?

**Professor QUINLAN:** No.

**The CHAIR:** Very good. Thank you so much. We will turn to questions. The first member of the Committee who has an opportunity to ask question is the Hon. Greg Donnelly.

**The Hon. GREG DONNELLY:** Thank you, Chair. Thank you for coming along today to provide us with the opportunity to ask you some questions. We have received your submissions and might be referring to them. First of all to Professor Quinlan and indeed Professor Thompson, in your submission the executive summary lays out—the executive summary is two pages in, or the third page in—the summary of your submission in points one through five. There has been the argument made that, with respect to the point that you raise in terms of the deficiencies—this is point number three:

Commonwealth and NSW anti-discrimination laws are presently defective because they fail to include religious belief as a protected characteristic ...

There is a view that New South Wales should not proceed and allow this matter to be resolved by the Commonwealth in the fullness of time. In point number five you say that the gap needs to be filled. Can you explain or elucidate on this point about why we should proceed in New South Wales without waiting for the Commonwealth and deal with this matter before us?

**Professor QUINLAN:** I might start. I think this is an issue which is very significant and one which requires attention sooner rather than later. It has been a long time coming. Yes, it is true that the Commonwealth has looked at this issue, but their looking at this issue has been characterised by, if anything, tardiness. It has been slow and the extent to which that legislation or that draft bill will ultimately be enacted is still very uncertain. What the ultimate terms of that enactment might be is still very uncertain. We know in Australia that religious discrimination occurs. For Committee members who are not aware of them, Dr Derya Iner's *Islamophobia in Australia 2014-2016* report published by Charles Sturt University and the Islamic Sciences and Research Academy of Australia [ISRA] in 2017 and the Executive Council of Australian Jewry's *Report on Antisemitism in Australia 2019* evidence that fact in relation to those religious traditions.

There are examples in relation to the Christian tradition, which does not have that kind of formalised collection of information. But there are examples of religious discrimination on the Human Rights Law Alliance website. What has changed in Australia? I probably will not go through the Census information because Committee members will be aware of that fact. There has been a significant change over the years in the demographic constitution of religious believers and nonbelievers in New South Wales. That means that we have a much wider range of people with different religious traditions and beliefs from those traditions, and a larger proportion of the population who self-identify as having no religion. More significant is what has been identified by McCrindle in one of his studies—I am sure you are aware of Mark McCrindle and his studies—where he looked at attitudes towards Christianity. His focus was on Christianity in Australia.

I think his report very powerfully demonstrates the need for this kind of legislation because he found that almost 18 per cent of Australians know nothing about the Christian Church in Australia. Whilst nearly 80 per cent of Australians know at least two Christians, a significant number of Australians—8 per cent—do not know any

Christians. The lack of knowledge of Christianity in Australia is a significant cause of the fact that more than a quarter of Australians have a negative view of Christianity and religion. I am quoting here from a paper that I wrote in the *Journal of the Australian Catholic Historical Society*, volume 39, 2018. The paper is called *Law and Religion in Western Australia: Cooperation or Conflict?* That is on page 79 if Committee members want some more detail about the McCrindle study. The reference to that study is also available in that paper.

**Professor THOMPSON:** That question has been alive since before Federation. The view at Federation of Australia was that majority viewed that we did not need protection of rights because they were adequately protected in the common law. It is fascinating to see how rights have come again since the Second World War. We have the universal declaration, for example, and subsequently Australia, of course, has bought into rights. All of our anti-discrimination legislation is a buy-in to the discussion. We signed the declaration. We were charter members of the rights declaration of the UN right then. We ratified the International Covenant on Civil and Political Rights [ICCPR]. We promised to implement it. In 1980 it was not clear whether the Commonwealth could do that.

**The CHAIR:** Mr Thompson, we have reached time if you could complete your sentence, please.

**Professor THOMPSON:** That is fine.

**Mr JIHAD DIB:** Madam Chair, I am happy for Mr Thompson to continue with some of my time. I am happy for you to continue with Mr Donnelly's question. If you get the chance I might then ask about 22V.

**The CHAIR:** We are now going to Mr Dib's question time. Please proceed.

**Professor THOMPSON:** Thank you, Mr Dib. In 1980 we promised we would implement the ICCPR including article 18. In 1998 the human rights commission of Australia recommended that we needed a religious discrimination Act. We did not do it because it has always been politically difficult.

**Ms TANIA MIHAILUK:** Who was that, sorry? Who are you referring to?

**Professor THOMPSON:** The Human Rights and Equal Opportunity Commission. It was not called that in 1998 but it recommended that, so we have recognised the need for a long time. There was a time when I subscribed to the view that there was adequate protection in common law, but it is clear that the doctrine of parliamentary sovereignty enables you good people to repeal any common law right by a simple majority vote if you are sufficiently clear and unambiguous in doing so. When we create a standard with the rights instrument, we protect it. And we remind you of that against the hysteria or the concerns of an age.

My concern has been that as we have recognised other human rights than this one, which was always regarded as a primary right because it connects to human conscience, that it has been overlooked. And some judges who see the proliferation of black letter law can only see the black letter statute law and the Anti-Discrimination Act. When there is nothing there that says you need to take religious freedom and conscience into account, they are apt to look at only what they have written down. I think that will do. Thank you, Mr Dib.

**The Hon. GREG DONNELLY:** Thank you, Professor.

**Mr JIHAD DIB:** Professor Quinlan and Professor Thompson, in the submission there is a reference to 22V, which is the education section, to exempt the religious ethos organisation from this section. It is unlawful for an education authority to discriminate against a person on the grounds of religious beliefs or religious activity. In reference to the religious ethos authority, are you talking about particular places of worship or are you talking about, say, schools that may be attached to a parish? Is there any thinking behind that that you can explain?

**Professor QUINLAN:** I am there pointing to the definition which is included in section 22K of religious ethos organisations and, in particular, in relation to private educational authorities, which is the relevant one here. The way that definition works is that you first need to establish that you are conducting the organisation in accordance with the doctrines, tenants, beliefs or teachings of a particular religion. That opens the question for a court to consider what the particular school or the particular tertiary education institution from a religious faith background is actually doing and asking the question of whether its conduct is actually in accordance with the doctrines, standards, beliefs or teachings of the particular religion.

Elsewhere in the bill, tests are set up which look at genuine belief, so that the question is genuine belief. But before you get to that question of genuine belief if you are a private educational authority, you have to pass through the gate of convincing a court that your activities are being conducted in accordance with the documents, standards, beliefs or teachings of a particular religion. The difficulty that creates is that that could lead a court into examining what constitutes the doctrines, standards, beliefs or teachings of a particular religion, and whenever you start to do that, as I am sure you are aware from your tradition and from the Christian traditions and from all the religious traditions, different people have different perspectives on some of the doctrines, tenants, or teachings.

So you then get the court hearing arguments from people about whether this particular doctrine is the actual doctrine of that particular religion or not. I think a genuine belief test would be a better test. I did not actually put this on the submission because I thought of it last night. I think adopting that genuine belief test which appears elsewhere in the legislation would be a sensible amendment as the gateway through which a private educational authority must pass before you get to the other tests.

**Mr JIHAD DIB:** Thanks, Professor. That has been clarified.

**The Hon. SCOTT FARLOW:** Dr Casey, I was interested in your submission and your recommendation that any bill include reference to the Siracusa Principles or be drafted in line with the Siracusa Principles. I was interested in your perspective with respect to how the bill is outlined in section 3. Do you think that is adequate to enable the Siracusa Principles to be interpreted in the anti-discrimination legislation?

**Dr CASEY:** Thank you for the question. The short answer is I think it is. It is an important recommendation of the Ruddock inquiry to express the consideration of the Siracusa Principles in anti-discrimination law because of the important role they play and the guidance they offer in terms of how to balance the limiting provisions in the different international conventions. I think the selection of some of those key criteria in section 3 is very helpful, just to underscore that point.

**The Hon. SCOTT FARLOW:** And with respect to that, do you think it has any further application when it comes to the Anti-Discrimination Act in terms of the competing rights of religious freedoms and the other items that are protected under New South Wales anti-discrimination law.

**Dr CASEY:** My understanding is this section will sit at the front of the Act, so in some ways bring the Siracusa Principles into consideration of all the parts of the Act. It is always a difficult, complex task, balancing different rights, and this can only help decision-makers under the Act in that work of balancing it in different rights claims.

**Mr ALEX GREENWICH:** Stripes is the LGBTI association of the University of Notre Dame. In drafting your submission, Professor Quinlan and Professor Thompson, did you consult with them at all to understand the experience of LGBTI people who may face discrimination?

**Professor QUINLAN:** As our submission makes clear, it is a submission which is made personally by us, so it is not a submission made on behalf of the university. I should have made that clear at the outset. I did not consult with Stripes in preparing this submission.

**Mr ALEX GREENWICH:** Following on from Mr Dib's question, your submission talks about further strengthening Mr Latham's bill to have protections to ensure that private education institutions be protected to only enrol students who share their religious beliefs. A Christian private education institution seeking to not enrol a Muslim student or an LGBTI student, are those the types of protections you are talking about?

**Professor QUINLAN:** I think when we are introducing religious discrimination legislation/religious freedom legislation it is important to recognise the vast number of different religions that there are, and the vast number of different religious schools that there are, and the different ways in which those religious schools might choose to structure their school by reference to fidelity to the teachings of the church or by reference to commercial practices and so on. There is a very wide range of different schools.

**Mr ALEX GREENWICH:** And so, would that extend to denying access to the school to, say, a student from a different faith.

**Professor QUINLAN:** My submission is that we should be open to diversity in our society and we should recognise the value of different schools providing education in different ways to different people who want to be educated in those particular ways, so we should be open to enabling schools that wish to. It will probably be a limited number, but we should be open to some schools if that is what they wish to do, to only enrol students from their particular faith tradition. I am not suggesting for a moment that all schools should do that but that is part of the diversity and variety that exists in our school system.

**Mr ALEX GREENWICH:** But you want to see that protection to be able to deny that service in law, that is the submission that you are making, I understand in the plurality of educational institutions that you feel should exist.

**Professor QUINLAN:** Yes. I think that, for example, an orthodox Jewish school should be able to, if they wish to, only enrol students from their particular tradition, if that is what they want to do.

**Professor THOMPSON:** May I say something else?

**The CHAIR:** Yes, of course.

**Professor THOMPSON:** As a matter of principle I note that freedom of conscience, speech and association are connected at the hip. You cannot speak freely unless you can think freely. You cannot associate freely unless you can speak freely. They are meaningless without each other. They stand or fall together, those human rights. Association necessarily anticipates that people will group and that they will group on the basis of interest, and I think the pluralism of our society anticipates that groups should be able to associate over their interests and that we should not be restricting their ability to do that. That is what I have to add.

**The Hon. MARK LATHAM:** I thank the panel for their submissions. I go to Professors Quinlan and Thompson at page 11 of the submission, the definition of a private education authority. You have noted the bill has the correct construction flowing from the Interpretation Act, but you are asking for the drafting to be clearer. Are you not really asking for the drafting to be broader, and is there a problem in declaring as private universities that are the product of public legislation and, in some part, public funding?

**Professor QUINLAN:** Whether or not it is enacted by a parliament does not determine necessarily whether public funding is available. But I expect that over the years there will be more religiously influenced tertiary education institutions. Some of those tertiary education institutions may be created by an Act of parliament. An Act of parliament can create any kind of obligations on any institution. The University of Notre Dame Australia, for example, was created by an Act of the Parliament of Western Australia. I do not think it is actually excluded from the definition, as I explain in the submission. But if it was created by an Act of the Parliament of New South Wales and that Act in the Parliament of New South Wales, like the Act in Western Australia, said that the University of Notre Dame Australia was to provide a university education in the context of Catholic faith and values, then to me that is an obvious private education authority with a religious ethos and it should not be excluded just because it has been created by an Act of parliament. That is all I am saying.

**The Hon. MARK LATHAM:** Just to follow up, in the practicalities of the New South Wales situation, what are the universities that the bill is excluding here? Is it just the Sydney campus of the University of Notre Dame Australia?

**Professor QUINLAN:** I could be wrong, but on my statutory construction of the legislation at the moment, because of the Acts Interpretation Act and the fact that you have to read things as if they are New South Wales Acts, I do not think the University of Notre Dame Australia would be excluded. But this is more a point of principle. I do not see a logical reason for the legislation necessarily excluding every institution just because it is created by an Act of parliament. If the Parliament of New South Wales decides to create a university which is a Christian university or an Islamic university, and provided for it to have a religious ethos, then why should that not be protected just because it has been created in that way?

**The Hon. MARK LATHAM:** But there is no practical example of an institution that is left out here in New South Wales in 2020?

**Professor QUINLAN:** I cannot identify one myself. But there are other tertiary institutions that are not universities. I have not actually conducted a survey of how they are all structured or created.

**The CHAIR:** Do any other panellists want to address the question the Hon. Mark Latham asked? There are two more minutes available. We will move to Ms Leong.

**Ms JENNY LEONG:** I think we would all agree, at least I would hope we all agree, that we are 100 per cent on board with the idea of implementing our human rights conventions and covenants into domestic law and enshrining those in domestic law. It is actually an obligation when we sign up to those international conventions and covenants that we do that. I note in Dr Casey's submission at point 8 he states that:

Religious freedom is not a claim for special treatment.

Dr Tobin and Professor Thompson's submissions refer to both human rights and international law conventions and covenants as things that we need to refer to, particularly the International Covenant on Civil and Political Rights. I wonder if any of you—I will go to Dr Tobin first, given that I in all fairness would prefer that we do not just have male voices talking in a room—are aware of any other anti-discrimination or indeed any other legislation that specifically takes one article from a declaration, and I am specifically referring to 18.3 of the ICCPR at section 3.3 (2) of the bill and articulates one article over another?

I wonder whether you think that is actually in keeping with the principles of how our universal declaration of human rights and international covenants and conventions are actually set out, recognising that there has been a lot of talk about balance? I am open to all of you responding, but I would like to direct to Dr Tobin first because it is good to allow some women's voices in this place.

**The Hon. GREG DONNELLY:** The Chair is a woman.

**Ms JENNY LEONG:** Indeed.

**Dr TOBIN:** Let me do my best to answer that question.

**Mr ALEX GREENWICH:** Point of order: Could Mr Donnelly please stop interrupting.

**The CHAIR:** Thank you. Dr Tobin, please proceed.

**Dr TOBIN:** I tend not to use the language of balancing rights, because it is a bit wobbly or fluffy. It is clear that various human rights can, in a particular situation, conflict. Then what you need is a mechanism for resolving that conflict, in that particular circumstance. That is what I think the Siracusa Principles provide. I do not use the metaphor of balancing rights. I use the expression of a metaphor for resolving a conflict and the resolution will apply to that particular circumstance, and perhaps what is said in that resolution will have application to other circumstances.

**Ms JENNY LEONG:** On that, I ask specifically about the choice in the bill to pick out then article 3 of ICCPR and explicitly state that, when we are not talking about a religious freedom bill, we are talking about amending the New South Wales Anti-Discrimination Act. We have not picked out the relevant articles in the ICCPR, or indeed other international conventions, that refer to the other forms of discrimination that are in the Act. To me that seems to go against the principle of not giving religious freedom special treatment, if you like, in the context of amending the Anti-Discrimination Act. We are not talking about a religious freedoms piece of legislation.

**Dr TOBIN:** I am no expert on the whole of the ICCPR. That said, my understanding of this amendment to our anti-discrimination bill is that in a sense all it is aimed to do is to fill a gap. We have protections against discrimination on the basis of a number of other things, as we rightly should, and the law is educative in those respects, but there is a great big gap and the Ruddock report, one of its clearest recommendations was New South Wales and South Australia should immediately fill this gap in the array of protections against discrimination.

**Ms JENNY LEONG:** Indeed, but if I can go to the point. The point is that this bill will seek to articulate article 18.3 of the ICCPR and no other article, so there will be given a hierarchy of this within our broader anti-discrimination law. Would you be supportive of other articles that are related to the other forms of discrimination in the Act being elevated such that we articulated all of those articles, or alternatively remove the reference to article 3 so it was actually in line with the Siracusa Principles that are being referred to at 3.3?

**Dr TOBIN:** If I could make just one small point in answer to that question, and that is in the question there is a factual claim being made, the truth of which I am not exactly sure of. As I understand it, your question relies on the idea that this amendment would give a certain kind of status to this protection which the other protections against discrimination would not have.

**Ms JENNY LEONG:** Indeed it does because section 3.2—

**The Hon. GREG DONNELLY:** Point of order—

**Ms JENNY LEONG:** —specifically articulates 18.3.

**The Hon. GREG DONNELLY:** Point of order—

**The CHAIR:** Ms Leong, if you could pause for a moment. We have a limited amount of time for Dr Tobin to respond.

**The Hon. GREG DONNELLY:** Point of order: The witness is entitled to answer the question and be allowed to answer the question fully without being cut off. Ms Leong cut the witness off. I ask you to remind her to be polite to the witnesses.

**Ms JENNY LEONG:** Chair, we are aware of the time and, with the greatest of respect to Dr Tobin, I think we are trying to get to the nub of an issue. I want to refer specifically to point 3 (2) where we do pull out. I do not have concern with point 3 (1) or point 3 (3) in the bill. It is about the choice to then refer specifically to article 18 of the ICCPR, which will be as part of the Anti-Discrimination Act. I have no concern at all with point 3 (1) or point 3 (3). It is about the choice to pull out that article and articulate that. I appreciate that may need to be balanced or weighed up in terms of the interpretation of the legislation but it does seem to be in complete contradiction to the principles set out in Dr Casey's submission that says at point eight that there is not an intention, and there should not be, a way of giving religious freedoms special rights or privileges. Dr Casey, do you have a comment?

**The CHAIR:** Dr Tobin, do you have a response to that question?

**Dr TOBIN:** I do not think I have anything to add to what I have said. I am very interested in what you say and I am very pleased to take your question on notice if you would be happy and to provide you with a better answer than I am clearly giving.



**Ms JENNY LEONG:** I would appreciate that and I appreciate that the time rushed situation is far from ideal.

**The CHAIR:** Dr Tobin, I believe you are taking a question on notice, we welcome your consideration of that question.

**Ms JENNY LEONG:** I was referring to Dr Casey's submission, does Dr Casey wish to respond?

**Mr PAUL LYNCH:** I am happy to defer my five minutes.

**Dr CASEY:** Thank you for highlighting it. In my reading of it I did not see it expressly referencing article 18 paragraph 3 of the ICCPR working to privilege religious freedom or give it a higher place in a hierarchy. On my reading on why it was included, thinking of the context in which the bill has arisen, there is a lot of contention around what it means to manifest religious belief. My reading of this was that this was a helpful way to clarify for decision-makers some of the important considerations that come into play when working out what the limits on manifestation are. I saw it more as a functional inclusion rather than an attempt to privilege or raise religious freedom above other rights. You asked Dr Tobin about this before. I think if there were analogous pieces or sections in international conventions which similarly helped in the interpretation of limitations on other human rights which could be looked at for consideration in the Act I would be open to doing that, depending on context and what they are and what they say.

**Professor THOMPSON:** May I add a comment to what Dr Casey has said? In the Victorian charter of rights and in the ACT equivalent legislation to create more general provisions in Australia the articulation of the concept of religious liberty set out in article 18 have been mischaracterised. They speak of "reasonable" limitations rather than "necessary" limitations. I will not go into the detail of that. I think it is helpful to actually include the words so that is not mistaken in New South Wales as it has been in the other State jurisdictions of Australia that have added the words. I think the habit of sticking closely to treaties is a consequence of our Federal system of government where when we implement X overseas treaties using the external affairs power we have to match, or the Federal government has to closely match, the international instrument otherwise it is held outside of power. State governments are not limited in quite that same way, but that has become quite habitual. I think it is very helpful in this context because of the fact that, to be honest, ACT, Victoria and even Queensland last year did not express what article 18 says correctly.

**Ms JENNY LEONG:** I point you to article 24 of the International Covenant of Civil and Political Rights. It states:

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

Given the Anti-Discrimination Act covers a range of those issues beyond religion we could, for example, put in paragraph 3 (2) (a) of the bill that would refer to that article 24. That article 24 relates directly to the contents of the Anti-Discrimination Act. If we were to support that then we can pick and choose other articles. My point is, why are we choosing that one to articulate in this bill if we are not seeking to create a hierarchy for religious freedom protections over other antidiscrimination protections in the bill? Indeed, would you be supportive of inserting article 24, article 27, article 28, we could list the whole lot, for we could reflect the importance of all of those articles being respected together?

**Professor THOMPSON:** I have suggested if we stay with article 18 we avoid the reasonable/necessary dichotomy that has been introduced in Australian State legislation by mistakes made in the ACT and Queensland. There are other provisions in international instruments which refer to the rights of parents to raise children in a faith of their own choice. Those have to be balanced, to use your words, against article 24. There are so many things that could be added. I think the particular benefit of including article 18 is simply to clarify this mistake that has been regularly made in State legislatures elsewhere in Australia.

**Dr JOE McGIRR:** Thank you for all attending today. Dr Tobin, we have touched on this but I am not a lawyer. Just for clarification, there is a concern about avoiding a situation where the judge clarifies a religion. Professor Quinlan, you referred to this earlier. Dr Tobin, you have suggested some wording around the definition of a religious ethos organisation. Could you expand on that and perhaps describe how that will avoid or address the issue that has been talked about as judicial definitions of religious ethos organisations, if I have correctly characterised the issue?

**Dr TOBIN:** Thank you for the question. I think there are two parts to it. One is just to make clear that I think and why I think it is undesirable for judges to be in a position where they are interpreting what a religious tradition teaches. That, I think, is undesirable. The undesirability of it is obvious, but I am happy to go on.

I imagine it is common ground in this room, but perhaps I am wrong. I cannot find where I say that. Are you able to point me to what page in my submission it is that I say that?

**Dr JOE MCGIRR:** I think you suggested a change in the definition of a religious ethos organisation to include the words "for the furthering furtherance and development of"?

**Dr TOBIN:** Yes.

**Dr JOE MCGIRR:** Just for my sake how does that overcome the issue of the judge defining?

**Dr TOBIN:** In this way: That it is more likely that a judge will think he or she knows what is the teaching of a religious tradition if he or she is referring back to something that is commonly thought to be the teaching of that tradition. At least some religious traditions have built into them the capacity for their doctrines and tenets and beliefs to be developed in such a way that they reflect and respond to current circumstances. That is why my wording, which I think others have adopted as well, gives a desirable flexibility for the teachers in a tradition to teach that tradition reasonably, respectfully and sometimes counter culturally.

**Dr JOE MCGIRR:** Thank you. I am happy with that, thank you very much.

**Ms TANIA MIHAILUK:** I want to refer to Dr Casey's submission if I may. On page 2, Dr Casey, you refer to Ruddock expert panel recommendations and you make a number of observations of some of the recommendations that this bill will address that have been recommended by that panel for our State to address. But also you make the point—I will just read it out:

The Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill goes some way towards implementing some of the recommendations of the expert panel relating to reform of anti-discrimination but the bill cannot be said to implement the expert panel's overall approach to anti-discrimination law reform.

I just wanted to ask if you could elaborate on that comment please?

**Dr CASEY:** Certainly. Thank you for the question. The point I am making is that the Ruddock panel made a number of recommendations about how anti-discrimination law might be reformed. In a way you can look at those as a package and I assume that the Ruddock panel's preference would be for those recommendations to be implemented as a piece rather than one recommendation at a time. So that is the point I was making there. In the current Act, as I highlight, recommendation two and 16 from the Ruddock panel are picked up and implemented but there are other recommendations which are not. It is just a way of saying rather than the Bill taking on the recommendations of the Ruddock panel as a package, it implements a number of those recommendations rather than them all.

**Ms TANIA MIHAILUK:** Would your view be that we should consider all? Is there an advantage to developing it as a package?

**Dr CASEY:** I suppose it is really a matter for the legislators. I think there is a practical problem at the moment in that three of the recommendations have been referred for further consultation by the Commonwealth—these are the recommendations around exceptions and exemptions in certain categories. I assume that, pending the outcome of that consultation, it is difficult to move forward on those. So it is a practical matter in terms of doing what we can do at the moment. This bill implementing recommendations two and 16 of the Ruddock recommendation panel is a helpful step in the right direction.

**Ms TANIA MIHAILUK:** I might go back to Professor Thompson. I wrote a note and I have just got to find it now. It was to do with Parliament being in a position where it can overturn common law rights. Are there any examples, there probably are plenty of examples, particularly pertaining to this sort of area?

**Professor THOMPSON:** The classic for me—and it may not be sufficiently on point but it is the first one that comes to mind—relates to self-incrimination privilege. The Parliaments have both abrogated that right in a lot of statutes so that people cannot, as the Americans might say, take the fifth. That has been abolished in many cases of statute. This Parliament strove—when Greg Smith was the Attorney General—to remove the right to silence. It did not really work because lawyers have gotten around that by simply not attending the police station when the warnings that would have taken that right away have gone. But there is a lot of case law that says if a Parliament is sufficiently clear and unambiguous, it can take away a human right and has done lots of times.

In religious liberty, we are right in the middle of a crisis where the common law right to attend church has been limited significantly in the interests of public health and safety. Mostly in Australia and New South Wales, church leaders have been supportive and have found ways to live with that. But there have been, now that we are starting to increase the rights. I see this very week that we can now go to church in numbers of up to 300 again so we see that is being relaxed again and I think that is wonderful. But that is an example of the fact that a right—a common law right—can be taken away by an act of the Parliament under a Westminster parliamentary

democracy system. They cannot do it as easily in the United States. Their Bill of Rights stops them doing that constitutionally. We are not proposing to do it constitutionally here. We are talking about another act which could be overruled by a simple majority vote.

**Ms TANIA MIHAILUK:** I thank you for that. That is actually quite a good example.

**The CHAIR:** Thank you Professor Thompson. Now it is Ms Preston's opportunity to ask questions.

**Ms ROBYN PRESTON:** Thank you Chair. My question is to Dr Casey. In your submission, you talked about 10 principles of religious freedom that would guide law reform. Can you elaborate on one of those and then I am interested to hear if there is any other contributions from the panel here today?

**Dr CASEY:** Thank you for the question. These 10 principles developed out of an attempt to address misunderstandings about what religious is and what it is not. Obviously they are set at a very high level. They are not quite philosophical but they are set at a level of principle rather than a practical statutory implementation. We hope to complement the 10 principles with a separate piece on what statutory implementation of the principles might mean which will be available next year. The 10 principles seek to highlight what religious freedom is and what it is not. You asked me to take one of the principles. The first principle emphasises that freedom of religion and belief is a universal human right.

That is really just an attempt to remind people. Sometimes part of the misunderstanding of religious freedoms is that people think it is just for religious people. Of course, it is not just a right for one section of the community. As the bill itself acknowledges and as the Ruddock panel also acknowledged, freedom of religion encompasses freedom not to have a religion as well, to change a religion, to have no religion at all or to live out a religion. In that way it is a universal right which belongs to everyone. That aspect of it is sometimes overlooked or misunderstood. It is very easy for people to think, what is religious freedom? It is no big deal, it is just for people who go to church and I do not. That is what that principle is trying to get at. Similarly, the other principles try to address misunderstandings or to draw out deeper dimensions of what is at stake in religious freedom to assist in contemplating what protecting it means.

**Ms ROBYN PRESTON:** Thank you. I invite other panel members to make comment please. Professor Quinlan?

**Professor QUINLAN:** I think the principles have been well developed and they are well explained in Dr Casey's submission. The critical thing to recognise, as I am sure Committee members do, about religious freedom is that it has two dimensions. It protects both individuals who are religious believers and non-believers—as Dr Casey indicated—but it also protects religious institutions, which are so fundamental to the carrying on of those religious traditions. Sometimes in our society we tend to consider people who have religious beliefs or protections for such people, as being an optional extra and not something which involves protecting them in relation to fundamental characteristics that guide their whole behaviour. In my submission, and I think it is a statement which is very clear on this, on page 8 of my submission from Laycock and Berg where they say:

[C]ommitted religious believers argue that some aspects of human identity are so fundamental that they should be left to each individual, free of all nonessential regulation, even when manifested in conduct. For religious believers, the conduct at issue is to live and act consistently with the demands of the Being that they believe made us all and holds the whole world together.

No religious believer can change his understanding of divine command by any act of will...Religious beliefs can change over time...But these things do not change because government says they must, or because the individual decides they should ... [T]he religious believer cannot change God's mind.

So, for people who actually live their lives in accordance with a particular tradition, it is not an optional extra. I mean, they have to behave in a particular way. That is part of their fundamental characteristic. It is part of their integrity as a person. And so, the fact that our discrimination laws do not protect such people from discrimination I think is a serious aberration.

**Ms ROBYN PRESTON:** It is an omission.

**Professor QUINLAN:** Yes. I might just add one comment in relation to Ms Leong's questions. We might like it or not but in Australia the governments decide which international instruments they make part of the law and which international instruments they do not. Our Commonwealth and State laws have always been very piecemeal when it comes to protecting people from discrimination.

**Ms JENNY LEONG:** We absolutely agree on that point, Professor Quinlan.

**Professor QUINLAN:** So there has been picking and choosing about which things to protect and which things not, but that is actually, I am sad to say, the Australian way. Australia enters into treaties but it then almost universally domesticates them in a way which uses only very particular Australian language and only adopts a particular aspects of the treaty. That is the reality.

**Ms JENNY LEONG:** And what a shame that is.

**The CHAIR:** Okay. Thank you very much, Professor Quinlan.

**Ms ROBYN PRESTON:** Do we have time to ask Dr Tobin to elaborate?

**The CHAIR:** We do, I believe. We are now into open question time, so we have about 15 minutes remaining. If members would indicate whether they have a question—

**The Hon. GREG DONNELLY:** Yes.

**The CHAIR:** Okay. Mr Donnelly first, and then we go—

**The Hon. GREG DONNELLY:** Thanks, Madam Chair: through you to Dr Casey—

**Ms JENNY LEONG:** Point of order: I think Ms Preston was suggesting that Dr Tobin did not have a chance to answer.

**The CHAIR:** I thought so as well.

**Ms ROBYN PRESTON:** Yes. That is why I asked whether there was time left.

**The CHAIR:** So there is about a minute.

**Ms JENNY LEONG:** I think that probably, if we have some extra time—

**The CHAIR:** Excuse me, Ms Leong. For you, there was about a minute.

**Ms ROBYN PRESTON:** Could I ask Dr Tobin?

**Dr TOBIN:** Thank you very much for the opportunity to add something to what Dr Casey said. The right to freedom of religion is a right possessed by everybody and I disagree with the religious beliefs of my co-religionists probably as often as I disagree with the religious, in the sense of this bill, beliefs of people of no religious tradition. But what the right protects is their right and my right to religious freedom, so it is not about my agreeing with what they believe or disagreeing with what they believe. I can think that their belief is just mistaken, but still they have a right to that belief.

**Ms ROBYN PRESTON:** Thank you, Chair.

**The CHAIR:** Thank you very much, Dr Tobin. Mr Donnelly? We are now into the last 15 minutes.

**The Hon. GREG DONNELLY:** Thank you, Chair, and through you: Dr Casey, at page 2 of your submission under the three dot points at the top you make some reference to the matter of common law. This is a theme that Professor Thompson picked up in part of his response to my question. I will just go to your paragraph:

In addition to these statutory rights and protections, the common law might also recognise a right to religious freedom. The Institute is engaged in a project to identify the extent to which the common law of Australia currently protects the right to religious freedom in New South Wales. The findings ...

The submission then goes on. I am wondering, bearing in mind the comments of Professor Thompson, if you would like to elucidate on those, either agreeing or disagreeing with them, and perhaps reflecting on—to the extent you can because it is not yet published—this research that has been undertaken?

**Dr CASEY:** Good. Thank you for the question. As Professor Thompson said, the assumption is, as we all know, that there are certain rights in the common law. For a long time there was an assumption that religious freedom was one of those rights. But more recently, some case decisions have suggested that that right is not there; it has been overridden by developments. So this piece of work we are doing is really an attempt just to clarify what the situation is. It is still underway so I cannot really speak meaningfully about what we are finding. It has taken us some way back into the earlier centuries of the common law to try to clarify things so it is a complex piece of work. But we hope it will shed some light on to what extent a common law right to religious freedom may still subsist in the law. It is a work in progress. I am happy to sort of—we will have it available by the end of the year and I would be happy to make it available to members, if that is of use.

**The Hon. GREG DONNELLY:** That would be good, thank you, Dr Casey.

**The CHAIR:** Thank you very much, Dr Casey. Dr McGirr?

**Dr JOE MCGIRR:** Thank you, Madam Chair. I want to return to the issue that I raised with Dr Tobin around the definition of a religious ethos organisation and Professor Quinlan you commented on this and Professor Thompson you commented on this as well. But I do not think you suggested a wording—just raised the issue of judicial activism in this regard. Dr Tobin has suggested the addition of the words in relation to furthering or development as a way of, I think, encompassing or avoiding a judge pointing to one particular belief that might

change over time, or whatever. Do you agree? What would your view be on the suggestion of Dr Tobin in relation to that definition, or is there a better way of changing this? I raise that because I think it is an important point that we do our best to try and circumvent judicial activism in this regard.

**Professor QUINLAN:** I think we both have the same objective in mind. My suggestion, if I did not make it clear, was to pick up the language from proposed section 22KA and insert that into proposed section 22K (1) (a) the definition of "*religious ethos organisation*" so that it would read, "a private education authority" that genuinely believes it is conducted in accordance with the doctrines, tenets, beliefs or teachings. So then the question that the court has to ask is: What does that institution believe? That should be much more easily identified because then it is a question of what their mission statement and their objects say rather than—and I think that would distance the court from having to really delve into the question of what those doctrines, tenets and beliefs were. But I do not have objection to Dr Tobin's suggestion, either.

**Dr JOE MCGIRR:** Okay. So you are suggesting a focus on the inclusion of this reference to genuine beliefs?

**Professor QUINLAN:** Yes.

**Dr JOE MCGIRR:** Can I ask a Dr Tobin if she has a comment on that?

**Dr TOBIN:** Thank you for the opportunity. My expertise, such as it is, is in ethics and not in understanding and indeed writing statutes, so what I would like to do is to take your question on notice, if I may, and give it some thought and come back to you.

**Dr JOE MCGIRR:** I would appreciate that.

**Professor QUINLAN:** I should just add—I mentioned the definition (a) but the same language would also appear before the words "conducted in accordance" in (b) and (c) in the definitions of "*religious ethos organisation*".

**Dr JOE MCGIRR:** Yes. I guess my concern is whether that is going to be enough. I kind of would appreciate, as Dr Tobin has indicated, some further reflection on that, to help me anyway, or help the Committee.

**The CHAIR:** Would you be happy to take it as a question on notice?

**Dr TOBIN:** I certainly would.

**The CHAIR:** Yes, definitely, Dr Tobin.

**Professor QUINLAN:** Yes. We are happy to do that, are we not, Professor Thompson?

**Professor THOMPSON:** Yes, surely.

**The CHAIR:** Thank you, Professor Quinlan and Professor Thompson. Do you have a comment, just in wrapping up?

**Professor THOMPSON:** I was going to make the observation that in practice, in court cases in which I have been involved, I have seen a number of judges try and deal with the issue by calling expert witnesses so that they might give advice, as it were, that the judge could then adjudicate, but the judge still ends up adjudicating. The solution in other jurisdictions than Australia—and I mean solutions at the apex level of both the United Kingdom, the House of Lords before it ceased to exist, and in the United States Supreme Court—has been to say: We are not experts in that area. We will defer to the religion, the authorities of the religion, on the matter of what is their belief because we are here to adjudicate law, and unless we can decide this matter—for example, by applying neutral principles of law—we will not get into the issue.

As Professor Quinlan has said, we can certainly respond in a little bit more detail on that. We might need a bit more dialogue to identify where you want to go with that, but I am just saying that we have a habit in Australia judicially of getting much deeper into religion than other courts in other apex jurisdictions that share our tradition have been willing to go. Part of the purpose of the international instruments is to respect the religious tradition rather than to have judges writing over the top of it. The one exception to that in Australian jurisprudence I think was the way that they treated the Church of the New Faith—the Scientology case in the High Court in 1983—where there was a very respectful definition of religion, and a difference in the High Court that was in marked contrast to that which was obtained in the Supreme Court of Victoria before it got to the High Court. They wanted us to understand that the Scientologists, who are much maligned, do have belief in a supreme principle, being or thing and they do subscribe to codes of conduct where they try and be good people, and that that is enough for their purposes.

That was one of the most enlightening statements or definitions that I have ever seen come out of a court anywhere in the world and it is now quoted in law and religion textbooks all around the world, because no-one has done it better. But it is a complex issue, and our courts like to get involved.

**Dr JOE MCGIRR:** It may not be possible, I understand, but I am interested to see if there is some wording on the definition here in this Act of religious ethos organisation that might help. You may come back and say that you do not think anything more would help, or you might refer to genuine beliefs or, as Dr Tobin has said, the furthering and development of doctrine. I would like a little bit more advice in that regard.

**Professor THOMPSON:** We will come back to that.

**The Hon. MARK LATHAM:** Professor Thompson, just further on that point—given your praise of the New Faith case, that is the approach of the bill, is it not? The notion of the sincerity test genuinely believes to give effect to that High Court 1983 ruling. Is that not a wise pathway?

**Professor THOMPSON:** That is the way that I read the bill. I felt that it was trying to respect the integrity and sincerity of religious belief. I applaud the bill for that effort, because I think that it clarifies what judges in Australia should be doing. They should not be as intrusive in the way that they interpret belief as some have been in the past. I could go through the cases, but I do not think that this is the appropriate place to do that today.

**The Hon. MARK LATHAM:** Scientology is a good example. While I assume none of us here are Scientologists, there is something of an underlying slur out there in society—that there is something unusual or strange about this outfit. You look at intense the media prying into the lives of people like Tom Cruise and John Travolta and others who subscribe to this, and they have uncovered effectively nothing. As you say, if these people believe themselves to be good citizens doing good things, and there is no evidential proof of wrongdoing or some sort of subterranean sect that is destroying society, why would genuinely believing in Scientology not be a valid justification for religious belief that stands in the statutes?

**Professor THOMPSON:** I agree with that completely. Even though there were five separate judgements in that case, they seemed to coalesce around that point. I thought that was a remarkable achievement. Justice Murphy dissented, but he did not dissent from the general principle of religious liberty.

**The Hon. MARK LATHAM:** He always dissented.

**Professor THOMPSON:** Well, he did say some really good things. He was the prophet, if I might say, who predicted that we needed to find implied rights in our Constitution. Because of him we have the implied freedom of political communication. That is the fruit of his insight. There are a lot of other more prominent dissenters.

**Ms JENNY LEONG:** Professor Quinlan, further to Mr Greenwich's points around access and decisions about who can come to or engage with an institution, one of the questions around this bill is whether it would extend to issues of government funding. For example, community building partnership grants that are given to community organisations and not-for-profit organisations to upgrade infrastructure. The question being that as part of that, one of the criteria is to say it is accessible to all in the community and it would improve access to all in the community. Under this bill, there are questions about whether or not having a requirement for, for example, a church to upgrade the air conditioning in a church hall and requiring that church to then allow community access to book the hall and not discriminating who is allowed to book the hall would be one of the factors to consider in that criteria.

Do you think that it is appropriate for government funding to be used to upgrade church halls, but then for churches to be allowed to say that certain groups would not be able to book and hire that hall because of their sexuality, gender identity or other beliefs?

**Professor QUINLAN:** I think that government funding should be used for public purposes. It will not surprise you to learn that, in my view, promotion and protection of religion is an important aspect of public good. Part of religious freedom is that organisations can conduct their affairs in a way which is consistent with their religious beliefs. For some religious traditions, it may be anathema to their religious beliefs to make available their property for purposes such as presenting positions, making arguments and convincing people towards positions that are contrary to the teachings of a particular church. Other religious organisations might hire their hall out to anybody. As a State we should be supportive of the diversity in our society, which means recognising the fact that different religions have different perspectives.

Those different perspectives are not something that the State should dictate, as a general matter, unless it is necessary for the purposes of article 18(3) of the ICCPR. Part of the diversity of our State and part of the

difference between religions is that they are different. They hold to different principles and they have different attitudes, even within denominations, about the hiring of church halls and simple like that.

**Ms JENNY LEONG:** I appreciate that. In relation to that matter of access, do you think that it would be appropriate—because there is a question around this in the bill—for a religious organisation to be able to take action against the Department of Premier and Cabinet, or indeed the individual who made the decision around what criteria was needed to be assessed on, because they were discriminated against by that organisation on the grounds of religious belief?

**Professor THOMPSON:** It is a challenging question to answer in a one size fits all piece of legislation.

**Ms JENNY LEONG:** I appreciate that is the case in the time frame that we have. I am happy to take that on notice as well.

**Professor THOMPSON:** I would make the observation that in a previous life before I became an academic—which I wanted to be at the end of my life—I advised many churches, and I was general counsel for one. Some of those churches would not take public funding no matter what, because they did not want what they called the golden handcuffs being applied to them so that legislators would tell them what they could or could not do. Others felt, as Professor Quinlan has said, that as a matter of diversity they were entitled to grants on the same basis as any other community organisation. That has been a huge issue in the United States because they interpret this principle through their First Amendment, which is similar but not the same as our section 116 of the Federal Constitution, meaning that you cannot do anything that would establish religion.

Yet they now have lots of public funding of lots of faith-based initiatives. Some of that has done a great deal of good. Both main US political parties, even though they represent as polarised a society as can be at the moment, seem to agree that the churches should be allowed and encouraged to participate in the public square, and they should not be excluded. Yet some voices say, "Keep them out. Privatise religion." There is a lot more in that question than we can answer here or even in a further submission. We might need to have a dialogue to be able to discuss where we go with that.

**Ms JENNY LEONG:** If I may put on the record as a question to take on notice, I would really appreciate your legal expertise and advice on whether or not you think that this bill would enable a religious organisation to take action either against the Government, a department or an individual where a criteria for government funding was set that allowed increased accessibility to the public more broadly. I appreciate that we will not have the time to go into it, but I would like to get that on the record so that we can follow up.

**Professor THOMPSON:** Can I clarify: You are asking, as a matter of public administrative law, whether a church could sue the New South Wales Government, or one of its departments or offices, because it did not get considered in a public allocation of funding?

**Ms JENNY LEONG:** Because the criteria as it stands requires you to measure whether it will improve access to the whole of the New South Wales community. For example—I do not have the exact criteria in front of me—if certain church groups have the ability to deny access to certain groups, then they will obviously never be able to score highly on that criteria. I am happy to share with the questions on notice that criteria, because it is a genuine, live consideration for many members in how we grade that criteria.

**Professor THOMPSON:** As I have said to many people in many legal contexts as a legal adviser, you cannot stop people suing. There is so much dexterity out there in the legal profession and in the aggrieved populace that they will look for anything. I am sure the answer is that some dexterous lawyer will be able to think of a way to sue.

**Ms JENNY LEONG:** I think this creates clear provisions, is what I am requesting.

**Professor THOMPSON:** When I read it, having practised in that field for 40-odd years, I did not see anything that obviously set the Government up to get sued, but I will not say that there is not.

**Ms JENNY LEONG:** Okay. I would appreciate everyone taking a look at that.

**The CHAIR:** Thank you, Ms Leong. Thank you all for joining us today. We have come to the end of our hearing session. There are a number of questions on notice, which we will clarify so that you able to address those if you wish. Thank you again for your time, your thoughts and submissions; we appreciate the spirit in which you have joined us today.

**(The witnesses withdrew.)**

**(Short adjournment)**

**TERENCE HUMPHREYS**, Co Executive Director, Twenty10, affirmed and examined

**CRISTYN DAVIES**, Board Director, Twenty10, affirmed and examined

**JACK WHITNEY**, Co-convenor, NSW Gay and Lesbian Rights Lobby, affirmed and examined

**GHASSAN KASSISIEH**, Legal Director, Equality Australia, affirmed and examined

**The CHAIR:** Good morning. Thank you for attending today. We will commence questioning with Mr Jihad Dib.

**Mr JIHAD DIB:** My question is for Mr Kassisieh, but I am happy for anyone else to jump in. There is a recommendation in your submission to review the entire Anti-Discrimination Act, but you also talk about the potential for an unequal nature of the discrimination and you make a reference to banning the burqa. Could you just explain that a little bit to me, please?

**Mr KASSISIEH:** In terms of the review of the Act as a whole, what we see from the bill is the insertion of a specific part into the Anti-Discrimination Act. There are other provisions in the Anti-Discrimination Act, particularly exemptions and defences that apply, that need to be read together with this new part. A good illustration where I think there is some clumsiness around that is; there is already a religious bodies exemption. And we are seeing a specific exemption around religious bodies being added as a secondary and complementary protection side by side. A holistic review of the Act would look at all the provisions and how they work together, rather than inserting a specific part of the Act.

In terms of the banning of the burqa, it is not a ban on the burqa per se, but a provision that says, in an employment context, when you look to whether it is reasonable to limit religious dress in the workplace, you have to look at particular mandatory considerations. Among those considerations are those that are being taken from European precedents that look at industry standards, for example, and communication requirements. We know from those cases that they have been raised as arguments for banning the burqa in Belgium, for example, there has been restrictions on banning full face coverings in public buildings because of an argument that it presents, for example, a barrier to communication. Our point around those provisions is that discrimination laws in Australia look to reasonableness in all the circumstances and they do not necessarily define what is and is not reasonable; you look at all the circumstances.

In a particular case, communication requirements or industry standards may actually reinforce discrimination rather than be a good lens through which to look at whether something is discriminatory. I can give you an example of that: Industry standards around airlines and an expectation that people wear particular types of uniforms because that is what we have always done, would be an example of reintroducing in a circular way existing ways of doing things in order to test whether or not that is discrimination. But you do not generally look at what you have done as a good barometer of whether you should continue to do that going forward.

**Mr JIHAD DIB:** Thank you.

**The Hon. GREG DONNELLY:** Thank you all for coming along today and making yourself available. My question is also for Mr Kassisieh. On Equality Australia's website in the area where there are details about encouraging people to participate in this inquiry, it states:

We can renew our efforts to remove outdated discriminatory laws once and for all ... not to mention laws that allow religious organisations to turn away LGBTIQ people from crucial services, schooling—

and that is specifically religious schools—

and employment, even when funded with tax payer dollars.

That is a clear statement from Equality Australia. You agree with that position—that is the position of Equality Australia.

**Mr KASSISIEH:** Yes.

**The Hon. GREG DONNELLY:** Is it the position of Equality Australia that the religious exemption provisions that are currently in the New South Wales Anti-Discrimination Act with respect to religious schools are past their use-by date and therefore should be removed from New South Wales discrimination law?

**Mr KASSISIEH:** Yes, and if I could explain that, they are not religious exemptions; they are blanket exemptions on private educational institutions. They do not ask a question of whether the expulsion of a student, for example, or discrimination in the classroom towards a student can be justified or is reasonable.



**The Hon. GREG DONNELLY:** Thank you for that. There is a submission to this inquiry which is submission No. 88. I would like to have the witness have a look at particular parts of submission No. 88 because your organisations—

**The CHAIR:** Yes, of course. We will have the Committee staff provide you with the submission.

**Ms JENNY LEONG:** Sorry, Chair. Can I just ask that the member provides details of what submission No. 88 is for the rest of us?

**The Hon. GREG DONNELLY:** Submission No. 88 is from the Institute for Civil Society.

**Ms JENNY LEONG:** Thank you. I did not bring all of the submissions with me.

**The Hon. GREG DONNELLY:** Sure. They are giving evidence this afternoon so I thought you might be prepared. Can I take you to—

**Mr ALEX GREENWICH:** Madam Chair, I ask that the Hon. Greg Donnelly withdraw that comment. That is unnecessary.

**The CHAIR:** The Hon. Greg Donnelly will proceed with the question. This is a submission for one of our witnesses this afternoon.

**Ms JENNY LEONG:** Chair, if I could just clarify, I do have the submission with me but as all members would recognise we have had a number of submissions and so referring to something as "submission No. 88" without referring to the title is not really in the interests of transparency or discussion—

**The CHAIR:** I take the point.

**Ms JENNY LEONG:** —to enable a fruitful discussion about how we are engaging with this process.

**The Hon. GREG DONNELLY:** Well, submission No. 88 is the—

**The CHAIR:** Excuse me, members. Excuse me, Mr Donnelly. You have asked the witness to consider a submission. It is submission No. 88.

**The Hon. GREG DONNELLY:** Yes, on the inquiry website.

**The CHAIR:** Just for clarity, it is submission No. 88 from the Institute for Civil Society. Does the witness now have that?

**The Hon. GREG DONNELLY:** Yes.

**The CHAIR:** Would you like to just familiarise yourself with it for a moment?

**The Hon. GREG DONNELLY:** What it specifically—

**The CHAIR:** Excuse me, Mr Donnelly.

**The Hon. GREG DONNELLY:** Sure.

**The CHAIR:** Would you like to have a look at the submission first and just familiarise yourself with what it is?

**Mr KASSISIEH:** Is it just the highlighted parts that I am—

**The CHAIR:** I believe that is what the Hon. Greg Donnelly will be referring you to, but you have the submission now.

**The Hon. GREG DONNELLY:** Yes, that is—

**The CHAIR:** Excuse me, the Hon. Greg Donnelly. I just want the witness to have a look at the submission quickly. Thank you.

**The Hon. GREG DONNELLY:** On page No. 3 of that submission under about point three on the page, "Unpicking the Criticism of the Bill as a Preferencing of Religion", you see the first paragraph that I have highlighted under that heading—

**Mr KASSISIEH:** Yes.

**The Hon. GREG DONNELLY:** —which quotes directly from your submission. They are quotes taken from your submission. You would be familiar with that, would you not?

**Mr KASSISIEH:** I will trust your word on that.

**Ms JENNY LEONG:** That is a risky approach. Apologies.

**The Hon. GREG DONNELLY:** Well, it is in the submission.

**Ms TANIA MIHAILUK:** It is unnecessary to make those sorts of comments.

**The CHAIR:** Excuse me, the Hon. Greg Donnelly. We have one minute remaining on this question. We would like the witness to answer. Thank you.

**The Hon. GREG DONNELLY:** I just draw your attention to the next highlighted paragraph, which states:

This criticism is erroneous and misleading. It is misleading because the Bill is only about discrimination on the grounds of religious belief (or its absence) – it provides **no** protection for anyone to discriminate against any person because of their LGBT attributes, their gender or marital status.

Do you see that?

**Mr KASSISIEH:** Yes.

**The Hon. GREG DONNELLY:** Then over the page the highlighted paragraph states:

This is not a "double standard" or a preferencing of religion over other rights as Equality Australia suggests. One would expect that Equality Australia and the Sydney Gay and Lesbian Mardi Gras also discriminate in that they do not accept and would not retain as members or employees people (whether religious or non-religious) who are actively opposed to the celebration and promotion of LGBTI lifestyle and issues.

**The CHAIR:** Excuse me, the Hon. Greg Donnelly. We are running over time. Could you please bring it to a question?

**Ms TANIA MIHAILUK:** He can have my time.

**The Hon. GREG DONNELLY:** I am entitled to ask my question and I am reading—

**The CHAIR:** You are. I am just reminding you that we have five minutes for each member. I think we had Ms Mihailuk saying—

**Ms TANIA MIHAILUK:** I am happy to give my five minutes just as Mr Lynch gave his to Ms Leong.

**Ms JENNY LEONG:** Point of order: I thought we agreed at the beginning—

**Ms TANIA MIHAILUK:** Sorry, Mr Lynch provided five minutes of his time.

**Mr ALEX GREENWICH:** He was the next one.

**Ms JENNY LEONG:** He was the next one along. I just wanted to check. I am happy to go with this if we are going this way but I just think we need to be alright with the fact that this is different to how we agreed to do it.

**The CHAIR:** Thank you, Ms Leong. Could we have the Hon. Greg Donnelly return to the question but just be mindful that we have allocated about five minutes to each member and we are coming up against that? But we will allow the witness to respond. Thank you, the Hon. Greg Donnelly.

**The Hon. GREG DONNELLY:** Well, I was interrupted reading the quote. So shall I go back and start the quote again?

**Ms TANIA MIHAILUK:** Madam Chair, can I just—

**The CHAIR:** Thank you, the Hon. Greg Donnelly.

**The Hon. GREG DONNELLY:** The question arises from the quote.

**The CHAIR:** Thank you, the Hon. Greg Donnelly. Please proceed.

**The Hon. GREG DONNELLY:** Okay. So you have been following the quote thus far?

**Mr KASSISIEH:** Yes.

**The Hon. GREG DONNELLY:** It goes on to say:

And neither should they be forced ... to do so. It just wouldn't work. By the same token, neither should religious organisations be forced by anti-discrimination law to accept or retain as members or employees people who are actively opposed to the beliefs, lifestyle, activity and mission of the religious organisation.

I have two questions. If you could just go back to the previous page, the quote from page 3 states:

This criticism is erroneous and misleading.

And it explains why:

It is misleading because the Bill is only about discrimination on the grounds of religious belief ...

Do you agree or disagree with that statement?

**Mr KASSISIEH:** I disagree that it erroneous and misleading, because it has misread what we said, which is that this would entrench the ability of religious schools and charities and other faith-based organisations to discriminate on the basis of someone's religion. So we were not making a statement about discrimination about sexual orientation. The reason for that is because when you have a religious exemption that is afforded to an institution you allow that institution to overbear on the private personal religious views of its members. And so in an example where you have an employee at an organisation that is established in accordance with its religious doctrines you actually deny the individuals' religious beliefs by enforcing institutional views around religious doctrine on them as a condition of, for example, their employment or access to services.

**The Hon. GREG DONNELLY:** Just to be clear, you do not accept that criticism made in that statement about your—

**Mr KASSISIEH:** That it is erroneous and misleading? No.

**The Hon. GREG DONNELLY:** Okay. If we just go then finally to the next page, the paragraph that I specifically referred to and the matter about Equality Australia and the way it is explained there, do you disagree with the assessment that is made there about your organisation's position vis-a-vis religious organisations?

**Mr KASSISIEH:** Yes.

**The Hon. GREG DONNELLY:** And why do you do that?

**Mr KASSISIEH:** Because when Equality Australia or Sydney Gay and Lesbian Mardi Gras says to people, "We don't care whether you are LGBTI or not. You are welcome to be part of our organisation, to work with us and to be part of the organisation." The difference is when the religious organisation says to someone, "You must believe and abide with—personally—a religious view no matter whether you can perform your job, whether religion is relevant to your job—"

**The Hon. GREG DONNELLY:** Sorry, I do not want to interrupt but you have not read the paragraph. It specifically says, using the example:

... also discriminate in that they do not accept and would not retain as members or employees people—

**Ms JENNY LEONG:** Point of order: The Hon. Greg Donnelly picked me up in the last session and I immediately withdrew and allowed the witness to continue to answer their question when I had interrupted. I think it is only reasonable that the Hon. Greg Donnelly do the same. We have all heard. The witness has a copy of the statement. We do not require the Hon. Greg Donnelly to read it again and we should allow the witness to continue and finish the observation.

**The Hon. GREG DONNELLY:** To the point of order: I am asking the witness to address specifically a part of the quote which he has not dealt with, and this is apposite to my point, about individuals:

... who are actively opposed to the celebration and promotion of LGBTI lifestyle and issues.

The position is that your organisation would not permit such a person to be employed inside the organisation, would you?

**Mr KASSISIEH:** A person who opposed the mission of the organisation?

**The Hon. GREG DONNELLY:** Who actively opposed the celebration and the promotion of LGBTQI lifestyle issues. You would not imply such a person who actively opposed, would you—

**Mr KASSISIEH:** The word "lifestyle" is extremely problematic but, no, we support equality for LGBTQI people and someone who is part of that organisation would sign up to that. The difference is—this is misquoted from our submission. In the sense of the double standard we are talking about, it is a double standard about religious belief. That is, our organisation sets appropriate codes of conduct and values that apply to everybody. It does not matter what your faith is. If you agree with the overall organisational mission and you are able to do your job, we do not discriminate on the basis of personal attributes to the extent to someone can do the job and is part of the organisation. The difference in the private members bill that Mr Latham has proposed is that it says: If you are an organisation that is conducted in accordance with religious doctrine, you can impose on your employees personally in their private life a requirement that they must hold the same personal views as the organisation.

**Ms TANIA MIHAILUK:** That would be the same in your case.

**Mr KASSISIEH:** The difference is that if those views do not interfere in your ability to do the job, then we do not see any reason why you would compel someone to have exactly the same views as the organisation that they are part of. I can give you a good example of that—

**The Hon. GREG DONNELLY:** What do you understand is the definition of religion then?

**The CHAIR:** We have one minute remaining, so I would ask Mr Donnelly to bring it to a conclusion.

**The Hon. GREG DONNELLY:** What do you understand then is religion if not at least in part or perhaps in significant part the provision of the understanding of the personal agreement to norms of behaviour?

**Mr KASSISIEH:** In terms of religion, it is a set of beliefs and values that accord with a personal identification with a spiritual realm.

**The Hon. GREG DONNELLY:** And animate behaviour.

**Mr KASSISIEH:** And motivate behaviour, yes, but that is not necessarily a legal definition of what religion is and—

**The Hon. GREG DONNELLY:** I do not have time to go on.

**The CHAIR:** Thank you for your answer. I will now move to Mr Farlow, who has a question.

**The Hon. SCOTT FARLOW:** I was actually interested in hearing the answer that you were going to offer to Mr Donnelly with respect to an example of that conflict. Would you mind elaborating and going back to the example that you were going to offer the Committee?

**Mr KASSISIEH:** As an example, just a couple of weeks ago a Christian woman who was in a same-sex relationship spoke to me about losing her job after she became engaged to her partner. That was known to the school. She was in an institution, rather, that was religious. They fired her. I do not want to use her name but let me use a pseudonym. Let us call her Amanda. She said to me, "I don't know any person who would be fired after announcing that they have been engaged to their partner." To me that was an example of someone who was part of that institution, who contributed to that institution and had done so for a couple of years at least and it was only on her engagement to a same-sex partner that the school or the institution decided that it would not continue to employ her in the position that she held.

If you are happy with how she was performing—in fact they made very clear statements that there were no issues around performance, and that she was actually very valued and well loved—it should not matter for her employment whether or not she is in a same-sex relationship. Imposing on her, as a Christian, a view of how her expression of her own personal understanding and interpretation and engagement with her own faith should be expressed is an imposition on her religious freedom. That is why I think there is a double standard. That is why we use the word "double standard", because her religious belief has been quashed to the detriment of her employment. She has lost her job because she had a different view of what Christianity required and endorsed than the institution she worked with.

There was no question about her being able to perform her job or complying with the values of the institution—dare I say the "lifestyles" and other things of the institution. She had been able to do that. It was only on that basis that she was terminated.

**The Hon. SCOTT FARLOW:** Do you believe there should be a protection for religious discrimination under the Anti-Discrimination Act?

**Mr KASSISIEH:** Yes, but it needs to be balanced to make sure that we protect people against discrimination and that we do not allow them to discriminate against others.

**The Hon. SCOTT FARLOW:** In your submission you mentioned the ethno-religious discrimination provisions that exist. Would I be right in saying that you would advocate for that provision to be expanded and to be afforded to other groupings rather than just the ethno-religious groups of the Jewish faith and the Sikhs?

**Mr KASSISIEH:** I think that is one way of doing that. You would have to make sure that all the sections of the Act work together. For example, there are situations where you do need to accommodate religious belief and activities. An example of that would be a prayer room or accommodation for dietary requirements. The Act is not actually very good at balancing those considerations, which is why I think a holistic review of the Act rather than piecemeal reform is how you get to the place where you either work out whether you expand the definition of ethno-religious, which I think we tried to do previously and that is how we arrived at "ethno-religious", or whether you insert a new provision that removes ethno-religious and makes it on religious belief and activity. But I agree that currently where it is at is unsatisfactory, because you should recognise all religions equally. You

should protect people without religious beliefs equally and you should not allow religion to be the basis on which others are denied equal treatment either.

**The Hon. SCOTT FARLOW:** So your view at present is that the Anti-Discrimination Act is deficient in its religious protections?

**Mr KASSISIEH:** Yes.

**Mr ALEX GREENWICH:** I might also start with Equality Australia and move to questions to the other panellists, if that is all right, to give Mr Kassisieh a break shortly. But this question is also for all the other panellists. What sort of scenarios are you concerned about occurring under this bill, including any gaps or conflicts that it may create in protecting people of faith?

**Mr KASSISIEH:** In terms of scenarios the organisational definition of doctrine—so the exemptions that exist for organisations that define themselves as religious would be one scenario we are concerned about. There are provisions in the bill that prevent an employer, a regulatory body like a qualifying body that, say, licenses or reviews the performance of doctors or enforces restrictions on educational institutions, from applying codes of conduct outside of traditional workplace or educational settings. Our concerns are that someone, for example, who harasses a colleague at 5.01 p.m., using religion as the guise for that harassment—there is no reason arbitrarily that they should not be—for example, using the company email—they should not be necessarily outside the reach of the employment obligations they would have if they had done the same thing at 4.49 p.m.

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

To just have a blind or arbitrary reason like "there are four walls to a workplace" ignores the fact that people hold positions of trust. The trust that the community holds in people like teachers, doctors and psychologists needs to be tested as to whether they should be able to maintain that trust on behalf of the profession.

**Mr ALEX GREENWICH:** Madam Chair, there is a running commentary from Mr Latham that is very distracting both for me and potentially for the witnesses. I ask that you bring him to order.

**The Hon. MARK LATHAM:** To the point of order: What is the nature of the running commentary? Can you identify it?

**Mr ALEX GREENWICH:** I cannot; I just hear audible mumbling.

**The Hon. MARK LATHAM:** You are concerned by mumbling. Your big issue today is mumbling. Unbelievable. What a joke.

**The CHAIR:** I ask that members are respectful of our witnesses and the time and the spirit in which they have come to give evidence to us. If we could keep the commentary sidebars to a minimum, that would really help. Thank you.

**Mr KASSISIEH:** Just on the question around gaps, apart from the religious exemptions that I just referred to and the issue around religious dress, the special measures clause is being removed. Special measures are measures that are taken to actually benefit a group and are particularly usually used towards minority-group religious adherents to meet needs or to redress historical disadvantage. That is being denied only on the ground of religious belief and activity. Vilification protections that currently exist on ethno-religious grounds, which protect some faith groups, are not being extended to other faith groups equally either.

**Mr ALEX GREENWICH:** Do the other panellists have concerns about things that could occur under this bill?

**Dr DAVIES:** My main concerns on behalf of Twenty10 would be the access in particular of young LGBTIQ+ people to healthcare, education and housing services. They would be our main concerns. We are in the business of removing barriers so that these young people can access those services so they are our main concerns.

**Mr WHITNEY:** I will just add further—similarly to the points made by Mr Kassisieh and Twenty10—that this bill does not reflect the nuanced nature of the workplace. The industrial applications reported by our

members are quite significant, especially when social media has such a big impact on the workplace these days— and also during lunch or after work hours. The nuanced nature of the bill also does not reflect the impacts on, for example, a young student who wears a hijab in a Catholic school or a social worker who already needs to abide by the code of ethics of the Australian Association of Social Workers when working with very vulnerable groups. There are already those impacts where the language is complicated, and it is hard to understand how it is going to be implemented within our society. I think that there are quite a fair few double standards in the law and it puts managers and employers in an impossible position about how to manage bullying and harassment in the workplace. It would only add to that.

**The Hon. MARK LATHAM:** Just coming to Equality Australia, the executive summary states in bold letters there in the second paragraph that the bill "privileges the interests of some people and institutions over the rights of others, including LGBTIQ+ people, women, people with disabilities and even people with different or no beliefs." How do you respond to the advice that we have received from academics earlier today and also the Department of Justice in New South Wales? When asked whether there is a risk that this bill creates a hierarchy of protections, where religious freedoms are placed above other protected attributes within the Act, the answer was no. Do you have legal advice that is contrary to that, and can it be tabled please?

**Mr KASSISIEH:** I am speaking as the legal director at Equality Australia. In terms of the question of the hierarchy of rights, the example I gave around organisations that define themselves as religious being able to exclude people who have different beliefs or no beliefs means that you are able to impose your own organisational beliefs that exclude others. You define your own rules around who is in and who is out and then in so doing, you get protection under the exemptions and also under provisions - I think it is clause 22Z - that deals with State laws and programs. That is unusual in that there are no provisions in anti-discrimination law in Australia that give an institution the same human right to non-discrimination that this bill has.

That says that an institution will be able to challenge a government contract or policy that says you must provide taxpayer-funded services equally to others. That is our concern around the way that religious doctrine then becomes de facto discrimination against groups that do not meet the requirements of those religious doctrines.

**The Hon. MARK LATHAM:** In your submission regarding no consequences for conduct, am I right in saying that earlier on you were suggesting that employers would have the same rights of sanction over their staff at 5.01 as they would at 4.59?

**Mr KASSISIEH:** The other way around. Because of the provisions on no consequences—

**The Hon. MARK LATHAM:** The same rights at 4.59 as they would at 5.01? At the moment at 5.01, under industrial relations laws, the staff have finished work and the employer has no rights under unfair dismissal laws. What are you saying?

**Mr KASSISIEH:** The provisions deal with rules, contracts and codes of standards of behaviour that apply to an employee. They can apply after hours. For example, bullying at night using company email can be regulated because it is in the course of the employment of an employee. The difference is that this bill has a provision that deals with when someone is performing work or at their place of work. The arbitrary nature of drawing a line between 4.59 and 5.01 is around the notion that the fact that someone is not at their work or performing work does not mean that the employment relationship that they hold with their employer completely diminishes. An example of that is an employee that makes comments on the weekend that bring their employer into disrepute.

**The Hon. MARK LATHAM:** That is not covered in the bill.

**Mr KASSISIEH:** That is part of the problem. It excludes the ability for an employer to impose appropriate standards of conduct. If for example the employee does things on the weekend that damage their employer's reputation there are very limited circumstances in which an employer can actually punish, sanction or prevent that conduct. The only exceptions are where it directly criticises the organisation itself—but if that person is making a comment about another colleague or another matter that is not the organisation, they cannot rely on that exemption—or where it causes material financial detriment, which is then defined as not including loss of corporate or other financial support. The problem is that there are such limited exceptions for employers to be able to navigate competing obligations that they have, as Mr Whitney mentioned, including under discrimination law on other grounds.

**The Hon. MARK LATHAM:** We are trying to save Rugby Australia and like organisations from themselves in that regard. But just to clarify, if at 11.01 p.m. a member of staff is articulating a view that does not mention or go to the nature of their employment on social media, do you believe that companies have the right to sanction that person?

**Mr KASSISIEH:** It depends what the comment is and it depends on the circumstances. It also depends on who is making that comment. Is it the person that is at the head of the organisation and who represents the values of that organisation, or is it someone in a much lower role who is not assumed to hold the same right to speak on behalf of the organisation? The important thing is that discrimination law looks at reasonableness, so it is able to look at all of those factors and make a decision in a particular case whether or not the employer has gone too far. The problem is that when you draw very arbitrary lines about when you are performing work or when you are in the workplace you cannot look at all of the context and the relevance of who is speaking, what is being said, where it was said, what impact it has had on others apart from the organisation itself and even financial consequences for the organisation itself. You need to look at all of those factors.

**Ms JENNY LEONG:** I would hope that the interests and protection and care of our young people in New South Wales would be a priority for all of us here in this room. As a youth organisation I wanted to ask Twenty10 how you see this bill and these amendments to the Anti-Discrimination Act having an impact on young people in New South Wales, how you believe the inquiry itself might be having an impact and how we need to be more aware of these things.

**Mr HUMPHREYS:** As Dr Davies had already mentioned, we are very concerned about the potential impact onto young people's capacity to reach housing, mental health or health care, or education. In those settings we already see major barriers to LGBTI young people's participation and access to those crucial services, particularly at times like reaching out for crisis care. We already see examples of those barriers, often around an individual's behaviour and conduct, like a staff member's behaviour and conduct, rather than an organisation itself. Those individuals are making a decision about whether or not that young person can access the care that they need, whether that be gender-affirming healthcare or access into crisis housing at 2.00 a.m. on a Friday when they have been kicked out of home and are needing to have safe shelter for the night.

It is not unusual for LGBTI young people to be turned away on the grounds of their gender or appearance, for instance. So, they are still rare situations, but they are situations that currently happen. I know that we are concerned that the bill as it stands will provide further protection for employees—more so than for the organisations themselves—for that conduct to be unchallenged and to have further impact onto young people. A recent example was where a young person and their partner went for COVID testing and following the testing the practitioner said that their gender was not in the health system, so they were not able to access their results and they needed to repeat the process. That individual was acting on their personal belief system rather than the code of conduct of the organisation they work for, presumably.

**Dr DAVIES:** Just to add onto that, we are very concerned that there are already existing barriers, particularly to health care and education. I will use health care because that is my area of expertise. We know that young LGBTI people experience stigma and discrimination. The cost of health care, the location, the time and the environment are all critical. A bill like this could certainly have a chilling effect on young people and their access to health care before you even get to the health care system. And then, of course, we know from the ACCESS 3 study in New South Wales and multiple other studies that there are multiple barriers. Our concern would certainly be that this would be yet another barrier to reduce the health and wellbeing of young people.

**Ms JENNY LEONG:** Thank you so much. With the remaining time, maybe I can ask both of the other witnesses to comment briefly on the issues around the complexities in workplaces. We touched briefly on that before. My understanding is that there is a possibility in this bill to be a scenario where—if we take the recent marriage equality plebiscite, a campaigner for the no vote and a campaigner for the yes vote may engage what an employer would consider unacceptable behaviour and identical behaviour. But the person campaigning for a no vote, on the grounds of protection on religious beliefs, would have to be treated differently by an employer for the same unacceptable behaviour related to what side of the vote they campaigned on because one would be able to take it on the grounds of religious belief. Is that your understanding? Are there other examples in relation to the complexities around workplaces that you might want to put on the record?

**Mr WHITNEY:** Just in regards to the general aspect of the workplace, we and our members have quite significant concerns. Rates of bullying and harassment in the workplace are already really high for our community. This will just be another barrier and add salt to the wound in a lot of ways. The Australian Human Rights Commission did a survey under Tim Wilson around a lot of these barriers and 56 per cent of the respondents said they felt poorly protected by current anti-discrimination legislation; 72 per cent of respondents had experienced violence, harassment and bullying in the workplace; 45 per cent of respondents had been excluded from participation in the workplace; 24 per cent of respondents had been refused a service in a workplace; and 62 per cent of respondents had felt that they were not wanted or were unable to disclose their sexual orientation in the workplace. A lot of this already shows that there are significant barriers in the workplace and this is just going to be a further barrier.

**Mr KASSISIEH:** Your example is a great one because religious belief is protected but other forms of belief or political convictions are not. The other thing to say is about the definition of protection around religious activity. It is very broad and it is broader than most States and Territories. It includes conduct that may be unlawful and even criminal, provided it is not an imprisonable crime. It overrides vilification, civil protections, anti-discrimination, codes of conduct, contracts, employment policies, and standards of conduct like medical codes of conduct and those sorts of things. And so, someone is able to say, "I'm being discriminated against on the basis of my religious belief," notwithstanding what the law says, what their contract says and what the policies in their employment or their profession say.

**Ms JENNY LEONG:** Just to clarify on that because that, to me, sounded quite concerning—are you suggesting that if this bill was to become law, people could engage in criminal activities lawfully under this? Could you just explain a little bit more about what you meant by that? It sounded concerning to me. I wonder if you could just expand on that a bit more.

**The CHAIR:** Ms Leong, I was just asking Mr Lynch if he wanted to go next, but he said, "Not now." That will go into the pot, as we say. We have a free question and answer session towards the end. I want to go to Dr McGirr, please, as the next member.

**Ms JENNY LEONG:** Sorry, Chair. Was my time up? I did not hear.

**The CHAIR:** It was. I am sorry, I should have made that clear.

**Ms JENNY LEONG:** Apologies. Thank you.

**Dr JOE MCGIRR:** Madam Chair, I am happy for Ms Leong to continue that point.

**The CHAIR:** What I would like to do is go to the next member if, Dr McGirr, you are saying you have no questions directly.

**Dr JOE MCGIRR:** I have got a question.

**The CHAIR:** You do?

**Dr JOE MCGIRR:** Yes, but I was just suggesting that—

**Ms TANIA MIHAILUK:** Madam Chair, I agree with Dr McGirr. There was quite a question that I think needs to be answered and the panellist started answering it. Perhaps we might at least allow that.

**The CHAIR:** Okay. So, Dr McGirr, you would be happy—

**Dr JOE MCGIRR:** I do have a question, but I would just like this to finish.

**The CHAIR:** Witnesses, I am sorry. You can see there are lots of questions. We are just trying to balance everybody's opportunity to ask questions. We have Dr McGirr saying that he is happy for your answer to continue and then we will come back to him for his specific question. Thank you.

**Mr KASSISIEH:** The definition of religious activity talks to activities that are motivated by religious belief that are not imprisonable crimes, so anything below an imprisonable crime could be protected. It does not mean that you are not breaking the law. It just means that the employer cannot take any action against you for breaking the law or policies or contracts—those sorts of things—because to do so would be religious discrimination on the basis of your religious activity.

**Ms JENNY LEONG:** Thank you. I might have a follow-up about that if we have time, unless we want to stay on that topic now and then move on.

**The CHAIR:** Dr McGirr?

**Dr JOE MCGIRR:** On that point, it does not mean that you are allowed to break the law. It just means that you cannot be discriminated against.

**Mr KASSISIEH:** An example would be—you might break confidence that you have in your role. Say you work at a bank and you have a particular religious conviction about a customer of the bank. You are making a loan out and you do not think that the bank should make out a loan for that purpose because you have a particular religious conviction that is contrary to that money being provided to that customer. Breaching that confidence would be an example of you breaching an obligation you have under a contract. It is unlikely to be a criminal issue but—a civil obligation. To do so on the basis of a religious belief would give you some protection. You would have to say that the requirement that you not divulge the confidence is either being applied consistently and is not a reasonable imposition on your religious belief.



**Dr JOE McGIRR:** Thank you for that. I am still unconvinced that you will not be sanctioned on that. I just think this gives you a protection in terms of discrimination. Can I just go on to ask my question? Thank you. I am sorry that this actual question is, Mr Kassisieh, to you again. I am sorry about that. I acknowledge Mr Greenwich's brave attempt to spare you.

**Mr KASSISIEH:** That's okay.

**Dr JOE McGIRR:** Thank you for your help. In your submission you have made a comment that the bill more or less gives organisations the capacity to challenge government programs or decisions made under New South Wales law on the basis of religious discrimination, such as the COVID-19 public health orders. My view is that all organisations should have some capacity to challenge government laws across the board on a number of bases, and that is part of being a democracy, but I think you are getting at here that it provides some unique capacity. My view would be that the principles outlined at the start of the bill around the Siracusa Principles actually address this issue. In fact, we have not seen religious organisations challenge the COVID-19 public health orders, so I am just wondering if you have a comment on that.

**Mr KASSISIEH:** There are two parts to that. In discrimination laws the provisions around challenging State laws and programs are only being provided to individuals, not to organisations, so that is a novel aspect of this provision. The issue with that is, obviously, an organisation is likely to have resources that allow it to challenge institutional orders, so anything that is made under a law that is an administration of a government program or policy could be challenged under that provision and that provision then says and an organisation that defines itself as religious is able to do that as well. There is an issue of resources and balance in terms of going beyond what other laws do in other States and Territories and also under the Commonwealth that is different about this law. Sorry, the second part of the question was?

**Dr JOE McGIRR:** Thank you for that verification, although I would contend that it is not something to argue against the bill. The other issue I had was in reference to the Siracusa Principles and the other principles as being a way of resolving situations, as an earlier witness talked about, where conflict can occur and the public good and so on.

**Mr KASSISIEH:** Yes. So, I have a more in-principle issue with the objects clause. It is not about whether or not we should recognise international law. We should and we should do it consistently and incorporate all of it, not just parts of it. The issue is the Anti-Discrimination Act itself is the implementation of an obligation to protect people from discrimination. So it represents the political compromise. We have taken the international principle and we have interpreted it and implemented it in Australia. We have done that through a whole range of tests throughout the Act. In disability discrimination we look at unjustifiable financial hardship; we look at the concept of reasonableness.

All those tests are unique and different to what is being asked by object 3, which is looking at proportionality. And proportionality is not a test that is in the Act because the Act tells you what is proportionate in particular cases. That is why we have a blanket religious exemption for some organisations. That is why we have blanket exemptions for private educational institutions and we do not ask whether they discriminate proportionally or not. It is imposing two inconsistent tests alongside each other. So I have a more fundamental legal issue with the uncertainty that is created in putting two inconsistent tests—one which we have rejected—in an objects section which is supposed to frame how you read every other test that does not meet that same standard.

**Dr JOE McGIRR:** Well, of course, the Act up until this point has not included religious discrimination and I am not sure that we have rejected those international instruments. The Religious Freedoms Review that was conducted recommended their inclusion and now that this is an attempt to bring religion into the Act. A mechanism is needed to resolve this issue and I think reference to the international instruments is a way of doing that.

**Mr KASSISIEH:** I agree with you. The courts already do that but they do that within the parameters of what the words of the Act say. So when you have two provisions of the Act which are inconsistent as to the test that applies, it actually makes it very confusing to people to know where the exemptions are and what the defences are. So, you are imposing yet another legal test that is not reflected because the way we have defined our discrimination protections is to afford the protections, and then to say in certain circumstances, those protections do not apply.

We do not ask that third question of should they apply notwithstanding the exemptions. We do not ask, for example, has a private educational institution rightly discriminated against a person of a different faith? We just say they have a blanket exception. So, you are imposing that third proportionality test which we have, in fact, rejected in the way we have already set out what you can and cannot do under the Act. I think legally it is much more uncertain than if you just say the Act is the political compromise, which says what is and is not proportionate, through the way we have put obligations on one hand and then taken them away in certain circumstances.

**Dr JOE McGIRR:** I think that applies to the Act without religious discrimination in it.

**Mr KASSISIEH:** Yes, but there are exemptions on religious grounds already in the Act.

**Dr JOE McGIRR:** Some.

**Mr KASSISIEH:** Some.

**Dr JOE McGIRR:** Limited. I am happy with that answer. Sorry, I do not want to argue.

**Ms ROBYN PRESTON:** I have been listening to your comments in relation to discrimination in the workplace and you gave examples of that as well. I want to put it around a different way because I notice in Twenty10's submission you talked about that you felt this bill exceeds Federal discrimination protections and prioritises religious rights over others. I am interested to hear from all of you if I put a scenario to you. Let us say you are employing a person to work at Equality Australia or at Twenty10 and they have like-for-like skills for a particular role. One of them is a very devout Christian who has very strong values in that area and has not worked in an environment that is convivial to your ethos and values. Another person is LGBTI consideration. They have sympathy and empathy in that area, leanings towards that and an understanding of that. They are like-for-like and employment qualities. How do you go about choosing a person in that particular scenario?

**Mr HUMPHREYS:** I am happy to start the answer. I would actually suggest that they may not be like-for-like but there is—when you are dealing with an organisation like Twenty10, it is a specialist homelessness service that specialises in young LGBTI peoples mental health, health and wellbeing. I would suggest that someone from within the community would have better understanding of the complexities that that can provide, but it would depend on the other person's experience. If you say that they have not actually worked in that field before then I would question whether they were, in fact, at exactly the same level. The person, irrespective of their personal identity, if they had worked in a similar organisation or with young people who are LGBTI before then that person would have the advantage.

But if they have the exact same level of experience of having worked with LGBTI people before then I would have a difficult decision. Someone does not get hired at Twenty10 based on their gender identity or their sexual orientation. We have heterosexual and cisgender-identifying staff, volunteers and service users as well. It is difficult to answer without more information and an exact example.

**Ms ROBYN PRESTON:** And I am putting a scenario forward but I am just trying to reverse the roles in your thinking. I am hearing that there are problems with people not being employed in a religious environment because they do not have those same values, so I am putting it back to you. It is important for you to have workers who perhaps have worked in the environment and have an understanding of what a mindset might be when they are dealing with their clients.

**Dr DAVIES:** I will just briefly add and comment that, I guess, people's identities are very complex and, indeed, there are many young people and people at our organisation that are both people of faith and may identify as same-sex attracted or gender diverse. People are generally not one or the other and they are complex. Certainly, we are very respectful of and encourage people of faith to come and seek employment and to access our services, as they do.

**Mr KASSISIEH:** I would echo that. I can only tell you of the extreme hurt and distress that I hear from people of faith who are LGBTI who do not want to see—and from myself personally from my cultural background. We are not bits of identity that just sit in two corners of a room. We are whole people who have multi aspects to that identity and just from my Arabic background, being brought up in a Christian household, my LGBTI—well, my G status—and my cultural identity and my family's religious background, all of those things are part of who I am. And I do not think any institution should make proxy assumptions based on whether someone is religious or not. The other thing I would say is the person I spoke about earlier was a person of faith. She was deeply Christian. She wholeheartedly was part of the faith and was able to be part of that organisation; demonstrate its values in the way that she taught.

I do not think there should be any assumption made that someone who is of faith is not able to work alongside us. And we have had members of very strong faith that are part of that organisation. And certainly supporters that have come along the way and have been there at the frontlines with us in challenging discrimination against people based on irrelevant considerations, when it comes to their ability to do a job, their ability to show care, their ability to show empathy to others. That is what matters. Our discrimination law recognises there are circumstances where you can get a particular exemption that allows you to favourably treat or look at, for example, an attribute so that you can do the peer support work. But we look at the circumstances very carefully to make sure that we are not recreating assumptions around someone's fitness to do a job by reference to just one aspect of their identity.

I think that has worked well. That is actually removed in this bill. Section 126 that allows you to do that; in respect of religious belief and activity, is removed. Discrimination law conventionally always looks at—we do not take identities as being the end of the story. But in some cases we do give exemptions so that we can redress historical disadvantage or provide programs. For example, domestic violence services that might have a need for employing others that have experienced domestic violence in the way that they provide it and generally tends to favour women in terms of employment. Discrimination law has that balancing in it, but we should start from a position that who someone is, is more than just one label and they may be many.

**Ms ROBYN PRESTON:** Would you care to comment?

**Mr WHITNEY:** I will be brief. I would argue that this Joint Committee acknowledges there is a gap and your scenario acknowledges that there is a gap in terms of religious protections for people, or protects people of faith. I would echo the points that people are complex and they have multiple identities. Our membership, we have people of faith who are LGBTIQ. Any bill put forward should recognise the dignity and worth of all people. Any bill put forward should uphold human rights and social justice of all people. A bill put forward should recognise the fluid and flexible nature of workplaces and people. A bill put forward should understand that a workplace is not just four walls, as Mr Kassisieh said.

In terms of the scenario, I would say that this bill will have real consequences and if it is not done right it could actually backtrack a lot of progress that we have made in a lot of ways and that the Anti-Discrimination Act [ADA] is outdated, the language is outdated. It needs renewal and it needs a holistic reform and not a piecemeal approach. Why do a bill and add to it consistently and not actually fix the ground and the roots of the problem and fix the bill in its entirety?

**The CHAIR:** The bill before us gives a right to religious freedom. What I hear you saying is that it might detrimentally affect members of the LGBTIQ community. Could you give me two examples of how that might play out in access to health services and housing, specific examples, maybe not from your experience? I really want to understand practically how that might play out, given your concerns. Thank you.

**Mr HUMPHREYS:** I guess I started with one earlier where a young person, who might be say trans or gender diverse, attends a housing provider that may be a faith-based organisation that does not exclude trans and gender diverse people from its service, but where an employee might make a personal judgment about whether or not to allow that young person to enter the service, such as a crisis housing scenario, often at the start of a weekend or at the end of the weekend. That person is then able to deny access to the wraparound services that that organisation provides. They would then be potentially protected under the bill to say that their faith does not agree with, say, people transitioning, for instance, or someone of same-sex attraction, and therefore creating a barrier to service provision. And the same would go for health care where a young person accessing birth control or hormone replacement or just accessing any kind of general health care may be turned away or receive a different level of service based on the practitioner's conduct, that is not necessarily faith based but is their value system.

**The CHAIR:** Are there any comments from other witnesses?

**Mr KASSISIEH:** I think one of the biggest concerns is section 22Z around State laws and programs. An example would be a government funding agreement to one of those services that define themselves as religious that said you must provide the services equally to everyone. And that organisation has a doctrine that says we do not service same-sex couples here, or we do not accept trans people and we will not provide a service where we recognise them in the gender that they identify with. There was a case in 2010 of a foster care agency that did that and it took its case to the Court of Appeal under the existing religious bodies exemptions. And the court said that that exemption applied.

That was a case of a foster care agency which denied a same-sex couple an ability to apply to become foster care parents, and actually that service is contracted by the Government to assess eligibility for foster care parents under legislation. If the Government were to say to them under the contract: you must provide your services in a non-discriminatory manner to all; that would be an example where we would be concerned that this bill would allow that organisation to say: that funding contract discriminates against our institutional view and that we should receive the funding to provide the service with the caveat that we will not provide it to members of the LGBTI community.

**The Hon. GREG DONNELLY:** Except that there is an exemption in the legislation to provide for that.

**The CHAIR:** Excuse me, Mr Donnelly, if I could ask the other panellists; are there any other comments to my question?

**Mr WHITNEY:** I would add to Mr Kassisieh's point around section 22Z, but also section 22M of the bill that enables religious ethos organisations to discriminate on the grounds of what is deemed to be a religious

activity, and the scope of that is quite clumsy and broad. We did ask our members some real case scenarios and some situations that may impact them. If I can just read some of them out—

**The CHAIR:** If they are in the submission, that is fine.

**Mr WHITNEY:** Yes.

**The CHAIR:** But if there is anything additional you would like to add.

**Mr WHITNEY:** A lot of individuals talked a lot about the foster care agencies and how social workers, they were providing a social service to the public and which were typically faith based. These were also government funded, but also if they worked for those organisations they would be able to fire them at any time. So there are those aspects but also the industrial impacts that relate to health and social services. You have to remember as well, our community has had more impacts around health inequality and health impacts if you look at our HIV AIDS histories, if you look at mental health, if you look at the dual nature of health and homelessness. There are these impacts where there will be real implications for our health and well-being.

**Mr ALEX GREENWICH:** Feel free to take these questions on notice if you prefer. First is the way in which this legislation could allow people to get around public health orders. The second is the important question that Ms Preston asked, the work that has been done amongst the LGBTI community and faith-based organisations to facilitate mutual understanding and respect and how this bill would unnecessarily facilitate conflict against those hard fought gains and progress.

**Mr WHITNEY:** This bill does nothing to build tolerance in society and respect in society. I have said that a bill should respect the dignity and worth of all people. A bill put forward should also recognise the dual relationships of people in workplaces and the flexible nature of that. I would say that our community is also recovering post marriage equality and there has been the need for healing and this does not do anything to be part of that healing process. If we want a true step forward there needs to be an holistic review of the ADA and we support that as the lobby.

**Mr KASSISIEH:** Mr Greenwich, we have a joint statement that has been signed by more than 80 organisations, which includes faith-based organisations, and they reject the One Nation bill but support fair and equal discrimination laws that protect all of us, including those of faith and those who are not religious equally alongside other groups. I am more than happy to send you that and table that.

**Dr DAVIES:** As I commented earlier—and thank you for a really helpful question—people are not one identity or another but they are multiple identities. Certainly young LGBTQI+ people of faith I would consider to be even more vulnerable. We would hope that they would access our services and I think the current bill put forward would not support that.

**Mr ALEX GREENWICH:** Just flagging the public health order question on notice?

**The CHAIR:** If there is a document you would like to tender you can do that. The Committee will consider that document at a later time. We welcome that, of course.

**The Hon. GREG DONNELLY:** Mr Kassisieh, just on the matter of fostering. You would be aware that there is an explicit exemption provision in the New South Wales legislation for faith-based foster agencies, which was specifically placed into legislation to allow them to continue to function and carry out their fostering. Would you be aware of that?

**Mr KASSISIEH:** Yes.

**The Hon. GREG DONNELLY:** Is it your submission that is a discriminatory provision and should be removed from the legislation?

**Mr KASSISIEH:** I think it needs to be amended. The bill goes further than just giving an exemption.

**The Hon. GREG DONNELLY:** This is the existing legislation.

**Mr KASSISIEH:** Yes.

**The Hon. GREG DONNELLY:** There is existing legislation for fostering and adopting and there is an explicit exemption for faith-based organisations.

**Mr KASSISIEH:** There is actually two. There is one on adoption and then there is a broader one which deals with religious bodies. The one on adoption is not the one that deals with the foster care situation.

**The Hon. GREG DONNELLY:** My question is that your primary submission is that a provision like that is intrinsically, based on the language in your submission, discriminatory and should be removed from legislation?

**Mr KASSISIEH:** My submission is that we should judge people on their merits.

**The Hon. GREG DONNELLY:** Just finally, with respect—

**The CHAIR:** —Mr Donnelly, we have about 30 seconds at this point.

**Ms JENNY LEONG:** Chair, are we allowed two questions when it is extra time? I indicated I had a question.

**The CHAIR:** We are doing it five minutes at a time, we are allocating on that basis. Mr Donnelly, you have 30 seconds.

**The Hon. GREG DONNELLY:** You would be aware there has been a preliminary report produced about the electronic survey that has been done in respect of this bill. In that 68 per cent supported it, 5.8 per cent supported it with amendments, 25 per cent no, and 0.74 per cent are undecided. With such overwhelming support shown for the proposed legislation why should this Committee endorse your primary submission of rejecting the bill over the views expressed by so many in the online questionnaire?

**Mr KASSISIEH:** I think it is really important that we have an informed and respectful debate about what is in the bill. And I think one of the issues with the tool that is being taken is that you need to explain to people what is in the bill. The questions that were asked around support or support with amendment and with reference to a piece of legislation that is before the Parliament, most people who have not had the privilege of attending a law school may not even understand all aspects of that bill. I think they should be provided with information about what is in the bill so they can provide their views in a way that is meaningful.

**Mr WHITNEY:** Not to mention that survey was potentially open to people outside New South Wales.

**The Hon. GREG DONNELLY:** So, you dispute the result?

**The CHAIR:** Mr Donnelly, it is time. Is there anything further that any of the witnesses wish to add to the question, otherwise I will close the hearing?

**Ms JENNY LEONG:** Chair, can I put one question on notice?

**The CHAIR:** I am just taking some advice as I wish to be fair to all members. The ruling that I have is that for it to be a question on notice the question should have been put to the witness and the witness had said during the session that they could not answer and they would take it on notice. On that basis I thank the panel—

**Ms JENNY LEONG:** —Sorry to interrupt. May I ask then that we agree that if any Committee members have additional questions to these witnesses that we are able to put them in writing and ask that the witnesses provide their responses in writing within a reasonable time period?

**The CHAIR:** The advice I have is that is opening up the examination of the witnesses, which we have just concluded. I might say that there is the opportunity to ask for the witnesses to appear again at a future time if the Committee so chose.

**The Hon. GREG DONNELLY:** No supplementary questions.

**Ms JENNY LEONG:** With the greatest of respect, before you closed the session I attempted to intervene to see if we could put questions on notice. It sounds like other members, myself included, have further questions. Obviously with the hearing schedule challenges it would be unfortunate to not be able to ask that question. I do not believe we have closed the session. At least, we did not get agreement from the Committee that we were closing that session. It would be appreciated if we could agree to that now and ask the witnesses if they would be willing to respond to any additional questions in writing.

**The CHAIR:** Ms Leong, the advice that I have is the way that we can deal with that is to have a deliberative meeting as a Committee to reopen that session and have further questions.

**Mr PAUL LYNCH:** Could we not just have supplementary questions?

**The Hon. MARK LATHAM:** Is that a Standing Order of this Joint Select Committee, because it is certainly standard practice, sensibly so, in the upper House that you can ask supplementary questions.

**The CHAIR:** If the Committee is so minded that you would like to reopen the hearing, I am trying to keep proceedings to time, we have other witnesses who are sitting outside we need to see in 12 minutes time, if it

is the will of the Committee to have Ms Leong pose another question to our panellists—is that the will of the Committee?

**The Hon. SCOTT FARLOW:** Can I make a suggestion, that we deal with this in deliberative at the conclusion of the day so that we can get the next witnesses?

**Ms TANIA MIHAILUK:** I had a question too.

**The CHAIR:** Would that be the way to go?

**Ms JENNY LEONG:** With respect, Chair, the reason I am doing this, to Mr Farlow's point, is that in previous Committees I have been in what we say at the end of the session, before the session is closed, is if the Committee finds they have any supplementary questions that they would like to submit would the witnesses be willing to provide answers to those in writing. What I was requesting is that we could ask these witnesses that question now so that we do not have to have a full discussion in deliberative about the need for that and then also swear the witnesses back in to agree to that.

**The CHAIR:** The advice that I have is that we need to resolve to do that, which we can do quickly if it is the will of the Committee to do that.

**Mr JIHAD DIB:** Yes.

**The Hon. GREG DONNELLY:** Yes. I move that way.

**The CHAIR:** Thank you so much. I do thank you for so respectfully dealing with the members of our Committee as I hope you felt our Committee was with you.

**(The witnesses withdrew)**

**(Short adjournment)**

**REVEREND SIMON HANSFORD**, Moderator, Uniting Church Synod of NSW and ACT, sworn and examined  
**PETER WERTHEIM**, Co-Chief Executive Officer, Executive Council of Australian Jewry, sworn and examined  
**MARK FRANKLIN**, Director, Multicultural Communities Council of NSW, affirmed and examined

**The CHAIR:** Good morning, gentlemen. Thank you for joining us today. The first member of the Committee to ask questions during this session is the Hon. Greg Donnelly.

**The Hon. GREG DONNELLY:** Thank you, Chair, and thank you gentlemen for coming along this afternoon. We have received your submissions and they have been recorded as submissions to the inquiry. My first question is to the Rev Simon Hansford, specifically on the submission of the Uniting Church Synod of NSW and ACT. In grasping the conclusion which is the very last paragraph of your submission where you say:

It is not yet clear to the Uniting Church Synod of NSW and ACT that the possible benefits of proposed legislation substantially outweigh the potential disadvantages.

With respect to another submission we have received, which is submission 190 to this inquiry. [REDACTED]  
[REDACTED] You may or may not be familiar with it.

**Reverend HANSFORD:** I am not familiar with it but thank you.

**The Hon. GREG DONNELLY:** Uniting, as an organisation is that—

**Ms JENNY LEONG:** Point of order: I think it is reasonable that the witness is able to be provided with a copy of the submission if he is not familiar with it.

**The CHAIR:** I just asked that question and as soon as we have it available it will be provided to the witness.

**Reverend HANSFORD:** Thank you.

**The CHAIR:** Please proceed.

**The Hon. GREG DONNELLY:** I might just pause.

**The Hon. SCOTT FARLOW:** Considering the time, should we perhaps move to the next questioner and come back to the Hon. Greg Donnelly?

**The CHAIR:** That is a very good idea.

**Mr ALEX GREENWICH:** I do note that the Hon. Greg Donnelly has started questioning twice now and I thought we were going to go down the line.

**Ms TANIA MIHAILUK:** It was Jihad Dib last time.

**Mr ALEX GREENWICH:** And at the first panel it was the Hon. Greg Donnelly.

**The CHAIR:** I can assure you that we are moving people down to the end of the list if they have started and it was Mr Dib. So in the interests again of time, do we have the submission available? If not, would you like to move to your next question?

**Reverend HANSFORD:** [REDACTED]  
[REDACTED]

**The Hon. GREG DONNELLY:** I will move on while we wait for the submission. Can I move on then to the next question? With respect to the definition of what religion is—

**The CHAIR:** Excuse me, gentlemen. Can we have a little bit of quiet?

**The Hon. GREG DONNELLY:** —for the purposes of our understanding of your submission on behalf of the Uniting Church and also understanding the context of the bill, what is a definition of religion from the Uniting Church's point of view? How do you define religion?

**Reverend HANSFORD:** I am not sure that as a church we would have that defined, particularly on behalf of the Uniting Church. But if I was to suggest that a religion was an act or a definition of faith, that would be a very broad brush definition of religion—

**The Hon. GREG DONNELLY:** Sorry. Did you say that the Uniting Church does not have a definition of religion per se?

**Reverend HANSFORD:** Not in that hardline kind of definition, no. I do not think so.

**The Hon. GREG DONNELLY:** So, on a question of religion not having a definition from the point of view of the Uniting Church, does that leave it to each member of the congregation to formulate their own position with respect to what religion is?

**Reverend HANSFORD:** No, because the Uniting Church—like most faith traditions—would have a statement of doctrine and belief to which it would ask people would adhere and understand and affirm within boundaries. For example, we do not say that if you do not believe this you cannot join but we would have a clear set— Our basis of union, for example, and the heritage to which that belongs, they would be affirmations of faith and statements of doctrine and faith to which people would adhere.

**The Hon. GREG DONNELLY:** If a person in the Uniting Church faith tradition acts in a way which does not meet the tenets or the doctrines or the teachings of the Uniting Church, does that put them outside the faith?

**Reverend HANSFORD:** No.

**The Hon. GREG DONNELLY:** So where does it leave them if they do not subscribe to a definition or a doctrine or a tenet which is prescribed by the Uniting Church, where does that leave them vis-a-vis their faith?

**Reverend HANSFORD:** I think prescribe is a difficult word but in terms of a community of faith, we would see ourselves very much as constantly having a conversation about the faith of people. It depends what part you play. If you are an ordained Minister who receives a stipend and you deliberately and constantly stated that you did not believe the basic tenets of the church, we would say to you why are you in that placement? If you are a member of a congregation and a person who just simply attends worship or is part of a small group et cetera, then our sense of constraint about their sense of belief is nowhere near as defined or—

**The Hon. GREG DONNELLY:** So it is flexible?

**Reverend HANSFORD:** Flexible but we see ourselves as a community of hospitality, welcoming people in, grace and welcome, rather than a community that says, there are definitions of how we keep you in or keep you out. I think the history of the church's experience over the last couple of thousand years would say that there are often dangers of saying who belongs and who does not belong and we are very careful about that indeed.

**The Hon. GREG DONNELLY:** Okay. I gather my time has expired.

**The CHAIR:** One minute.

**The Hon. GREG DONNELLY:** Does the Reverend have the submission 190?

**The CHAIR:** Well, we wanted clarity on the number of the submission.

**The Hon. GREG DONNELLY:** TT, yes.

**The CHAIR:** Sorry?

**The Hon. GREG DONNELLY:** It is 190 TT.

**The CHAIR:** One ninety? Okay. That submission is the subject of a Committee deliberation later on this afternoon to authorise publication, or not. On that basis, we would not provide it at this point.

**The Hon. GREG DONNELLY:** Okay. Sure.

**The CHAIR:** Thank you. Okay. We move now to the Hon. Scott Farlow.

**The Hon. SCOTT FARLOW:** Thank you very much. Mr Wertheim, thank you very much for your attendance today. We have had some discussion already that, of course, the Jewish faith is one of the few that is actually afforded protections at the moment in terms of the current Anti-Discrimination Act under the ethno-religious provisions that exist. Has that been sufficient, to your mind, in terms of protecting the interests of those who are of the Jewish faith?

**Mr WERTHEIM:** It certainly provides us with a legal remedy at the State level and there are similar provisions at the Federal level, and the Jewish community, by and large in Australia, has had a fairly tolerant— has experienced tolerance and freedom without too much impingement. But that does not mean that there are no problems, that we do not face problems in terms of employees who are observant having to make compromises with their employer in terms of work arrangements. It does not mean that we have not had problems with antisemitism, which of course is well known; we certainly do, even though it does not exist at official levels. So in terms of the adequacy of the legislation, by and large, yes; but that does not mean that our situation here is perfect. We still have our problems.



**The Hon. SCOTT FARLOW:** So your contention is still that there are further measures that are needed in terms of being able to enshrine protections for religious freedom for the Jewish faith as well as other faiths in the anti-discrimination legislation.

**Mr WERTHEIM:** That is correct in so far as discrimination might occur purely on the basis of religion and nothing else, not ethnicity. And you can envisage situations where that might occur. Then there would be a need for an additional remedy.

**The Hon. SCOTT FARLOW:** And, Mr Wertheim, with respect, the position of your organisation is that you support the bill with certain amendments being made to it and you have outlined a series of those recommendations. I am just wanting to draw your attention to one of those recommendations. This is the further subsection and I will draw your attention to your submission. There are no page numbers.

**Mr WERTHEIM:** There are not, I am sorry.

**The Hon. SCOTT FARLOW:** That is all right. But anyway, it is recommendation 7, effectively, with respect to proposed section 22N. This comes into the employee contract arrangements that are provided there. Can you perhaps elucidate a little bit further in terms of why you believe that this set particular recommendation is particularly important?

**Mr WERTHEIM:** Well, we thought that the existing provision was just too black and white. It is too cut and dried. There are situations where, obviously, an employee will need protection from adverse action against an employer of a kind envisaged by section 22N. But there are other situations where employers and employees will come to an agreement in explicit terms beforehand about what the position entails and about the need for certain constraints on the conduct of an employee. If that is explicit and it is clear and it is freely agreed to, then we see no reason why the law should seek to interfere in that freedom of contract.

There are other situations that arise with respect to religious ethos organisations, which have their own particular concerns with respect to constraints on employees because, obviously, they do not want employees to act in a way that openly disrespects the faith on which the religious ethos organisation is based. So there would be certain constraints about that. That seems to be provided for in subsection 22N (9), although I would observe that there seems to be a drafting error in there. We noted that in the submission: that the reference there to subclauses (4) and (5) should really be extended to subclauses (3), (4) and (5) because it is subclause (3) that actually sets the rule and subclauses (4) and (5) elaborate on that rule.

**The Hon. SCOTT FARLOW:** I think that is a very helpful suggestion. Just briefly—I think I only have a small amount of time remaining—Mr Franklin, I am not all that familiar with your organisation. Could you perhaps outline the membership body and who the Multicultural Communities Council of New South Wales represents?

**Mr FRANKLIN:** The council has been operating since about eight years now and has individual membership and an elected board. It is not-for-profit organisation. The membership is quite wideranging across different ethnic backgrounds—European, Asian, African, Indigenous—and advocates on a wide variety of issues that may affect some or all multicultural communities. Its general emphasis is that if anything defines Australia these days it is multiculturalism. We see it as a positive asset for the country that is of great benefit to the country socially, culturally and economically.

**The Hon. SCOTT FARLOW:** Do I have a minute, or has time expired?

**The CHAIR:** Time is out.

**The Hon. SCOTT FARLOW:** Okay. No worries.

**The CHAIR:** Thank you, Mr Farlow, for understanding. Mr Greenwich?

**Mr ALEX GREENWICH:** Thank you, Chair. At the outset, can I just acknowledge the work that all three organisations do to facilitate common understanding and respect among people of different faith backgrounds, multicultural backgrounds and gender and sexual identity. I greatly appreciate the work you all do in that space. My first question is to Reverend Hansford. In your submission you recommend the development of a comprehensive human rights Act that includes religious freedom. Could you talk to that and how potentially that may be a better option than is being proposed by the One Nation bill?

**Reverend HANSFORD:** I think the concern that the church has is that picking a particular issue is often quite fraught and I think often perhaps the desire of a document that is so specific may have consequences it does not intend. And our feeling has been for some time that a far more comprehensive approach to human rights would be a far more effective way to go. We have, as you know, in this place and other places made very clear our support for a whole range of human rights, including religious freedom. But our concern about this particular bill

is that will have consequences which, for example, the LGBTIQ community would feel somewhat are at risk as a result of this bill.

I know I have spoken to other groups as well who are what we might carelessly call minority faith communities who are also concerned about the implications of this. Part of their concern is the lack of clarity about, until it is finally enacted, what it might then look like. That is what our concern basically is about having a larger more comprehensive approach towards this sort of issue.

**Mr ALEX GREENWICH:** My next question is to Mr Franklin. In your submission you raise concerns about offering time off during work hours to engage in religious observance but not affording non-religious workers a similar allowance may be discriminatory. Can you talk to that?

**Mr FRANKLIN:** Well, both are discriminatory in that you are employed to actually do the work of the organisation you are working for, but in addition to that allowing some people, based on their faith, to have time off for religious observance may actually increase animosity towards a particular religion, which is surely the reverse of what the bill is proposing.

**Mr ALEX GREENWICH:** Thank you.

**The CHAIR:** Mr Greenwich, do you have anything further?

**Mr ALEX GREENWICH:** That is all.

**The CHAIR:** Thank you. We will now move to Mr Latham.

**The Hon. MARK LATHAM:** Thank you, Chair, and thank you to the witnesses for their submissions and their appearance here today. If I could just go to Reverend Hansford and the Uniting submission that has been made. There are two points about it. At the top of the last page it points to—

**Reverend HANSFORD:** I am sorry, did you mean the Uniting Church proposal?

**The Hon. MARK LATHAM:** Yes, the Uniting Church. Yours.

**Reverend HANSFORD:** I am sorry, I am just parsing language because Uniting is a branch of the Uniting Church, that is all. Sorry.

**The Hon. MARK LATHAM:** Yes. The submission that you signed off, Reverend, points out that the Anti-Discrimination Act in New South Wales, along with other Acts you have identified, is a patchwork where incrementally different personal attributes are protected piece by piece. Is this the first time the Uniting Church has opposed or protested against that process? I could list all of the different attributes that have been added to the Act but is this the first time that you have lodged a submission to say that it should not happen?

**Reverend HANSFORD:** No. We have engaged in conversations around a range of rights issues and how people can be protected from or engage with these issues since our formation in 1977.

**The Hon. MARK LATHAM:** So every time a personal attribute has been added to the Act—you said that you were founded in 1977, the same year as the Act—have you complained about it?

**Reverend HANSFORD:** Not every time, but often—

**The Hon. MARK LATHAM:** About which issues did you complain?

**Reverend HANSFORD:** I could not spell that out for you.

**The Hon. MARK LATHAM:** Did you complain about disability, marital status, trans, sexual harassment, sex discrimination issues?

**Reverend HANSFORD:** We would have engaged with a number of those issues, absolutely.

**The Hon. MARK LATHAM:** And you opposed any of those personal attributes coming on board?

**Reverend HANSFORD:** I think the word would be that we engaged firmly on those issues.

**The Hon. MARK LATHAM:** I am asking you to answer my question, please. Did you oppose any of those attributes coming on board?

**The CHAIR:** Mr Latham, respectfully, please—

**The Hon. MARK LATHAM:** I think that I am entitled to get an answer.

**The Hon. GREG DONNELLY:** The witness is not answering the question.

**The Hon. MARK LATHAM:** Engagement is very different to supporting or opposing.

**Reverend HANSFORD:** I agree, and I think that this is also an engagement.

**The Hon. MARK LATHAM:** Did you engage in this fashion, or were you opposing this attribute of religious belief coming into part of the Act?

**Reverend HANSFORD:** I cannot answer that question completely.

**The Hon. MARK LATHAM:** Perhaps you could take it on notice and come back to us?

**Reverend HANSFORD:** I will do that, for sure.

**The Hon. MARK LATHAM:** On that page, the next dot point, you say that the bill favours some religions or belief systems over others. Where does it say that in the bill?

**Reverend HANSFORD:** Our concern is that the implications of that are in the bill. For example, when you spoke about the bill, our grave concern was, on behalf of Christians being under growing and increasing persecution in Australia, that this is the driving motivation behind this bill.

**The Hon. MARK LATHAM:** In my second reading speech, and I am very happy that you were able to read it and put it in your submission, I said that we know of other longstanding discrimination against Jews, Muslims and some of the other relatively new religious communities in Australia that are examples of discrimination that warrant passage of this bill. Is that something that the Uniting Church would agree with?

**Reverend HANSFORD:** I think so, yes.

**The Hon. MARK LATHAM:** Where is the priority given to Christians ahead of the groups that I just mentioned in that second reading speech?

**Reverend HANSFORD:** There was not in that phrase that you just used.

**Ms JENNY LEONG:** I appreciate that this inquiry is specifically focused on looking at a One Nation bill around religious freedoms that was brought to the Parliament as a private member's bill, but more broadly that the Anti-Discrimination Act has had a lot of engagement. There is also usually universal agreement before each election across the political spectrum that we need to engage in a comprehensive review of the Act. Obviously we do not have to accept the premise of the bill that is before us as the only solution to providing protection against religious discrimination, and I wonder if you could all briefly comment on whether or not you would be supportive of recommendations coming out of this Committee or actions by the Government to undertake a comprehensive review of the Anti-Discrimination Act, including the inclusion of a protected attribute around not discriminating on the basis of religion, given the questions and the concerns raised.

**Reverend HANSFORD:** The simple answer is yes. We would certainly be happy to be involved both in engaging with that conversation but also in seeing a more comprehensive approach.

**Mr WERTHEIM:** The Anti-Discrimination Act has been around since 1977. It has been added to incrementally. That is not a criticism, it is just a fact. All legislation of this nature should be reviewed periodically for effectiveness and comprehensiveness, if I can put it that way. One of the issues that we had with this particular bill was a lack of clarity that we felt about its interrelationship with other parts of the Anti-Discrimination Act. There is one section, 22M (3), which says that it does not impact on the exemptions given to religious bodies in section 56. But how that correlates with religious ethos organisations in this bill, and how this proposed part would interrelate with other parts of the bill, is not as clear as we would have liked it to be. We think that would need to be made explicit. If this form of legislation is adhered to, we would like to see the interrelationships aspect more clearly spelt out.

**Mr FRANKLIN:** In terms of that, we would like to see a review to streamline the complaints process so that it becomes less complicated and a lot of matters can get through to some sort of conciliation process much more smoothly and quickly, and at less cost as well. And that when you do have particular and severe cases of discrimination, there needs to be penalties imposed. My recollection is that has not occurred very much in the past.

**Ms JENNY LEONG:** Moving on from that, the submission from the Uniting Church refers to the church's support of article 18 of the International Covenant on Civil and Political Rights. In the bill that we have before us that this inquiry is focusing on—the One Nation bill—I note that section 3 (2) refers to and draws out specifically article 18 (3) of the International Covenant on Civil and Political Rights. Article 18 is about freedom of thought and belief. It is more than just religious belief. Article 3, as a subsection of article 18, then sets that out. I wonder whether any of you have comments on the idea of whether there is a need for there to be a drawing out of specifically article 18 (3), a subsection of one article in the ICCPR, as opposed to simply referring to—as it does in section 3 (1) of the bill—the entire Covenant on Civil and Political Rights. I am happy for you to take that

on notice, but I wanted your thoughts on just choosing one subsection of one article in what is a holistic approach to the protection of international human rights under the Covenant on Civil and Political Rights.

**Mr WERTHEIM:** Our submission expressly deals with that point. Proposed section 3—Principles of Act—is intended to be a reference point to international instruments for the whole of the Anti-Discrimination Act, yet the particular instruments that it focuses on seem to be directed primarily towards the issue of religious freedom. Therefore, if you are going to have an interpretive provision of that nature which requires a tribunal or court to have regard to international instruments to which Australia is a party, subject to reservations, that needs to be a much more comprehensive list than the one that is proposed. That is dealt with expressly in our submission.

**Ms JENNY LEONG:** If I may just ask a follow-up to Mr Wertheim before I go to the others on that, I would imagine that there are probably a number of United Nations declarations that have been resolved by the UN General Assembly over the years of its existence beyond just the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which is set out in (1) (b). I would also imagine that if we looked at the protected attributes across the Anti-Discrimination Act, there would be a number of other UN declarations around women, sexuality and disability that would also be able to be pulled out and put into that section.

**Mr WERTHEIM:** Indeed, and they are listed at the top of the third page of our submission.

**Mr PAUL LYNCH:** This is probably a question to Mr Wertheim, but I am happy for the other witnesses to comment if they so choose. I wonder whether you agree that, if we are serious about wanting to prohibit religious discrimination, we need to do something about banning the religious vilification of individuals as opposed to the vilification of a religion?

**Mr WERTHEIM:** That is a perennial question that has arisen not just before this Committee but others that I have appeared before, both in this place and in other places. I think that religious vilification is appalling. To denigrate people on the basis of their religious belief and faith is condemnable. No community has been on the end of that sort of vilification, and some of the violent consequences that often flow from it more than my community. We speak with a long historical memory about that sort of thing. Having said that, I am also conscious of the fact that religion is ultimately a matter of belief, ideas and theology. It is a lot of things but, ultimately, it is about ideas and ideas are not immutable factors.

Ethnic background is an immutable factor so, understandably, we have racial vilification provisions that will provide a remedy for individuals and groups that are targeted for their ethnicity. Because there is no answer if you are being attacked for your ethnic background—it is not something you can debate or discuss - it is an immutable factor and you are basically being vilified because of who you are. I understand that religious identity is very deeply felt by adherents of all religions and it is probably considered by many an immutable part of their identity. Yet, the fact is, it is based on ideas. People move from one religious faith to no religious faith, or from one religious faith to another; it is not immutable in that sense. The whole Enlightenment and post-Enlightenment are based on the idea that every philosophy, every ideology and every religion is up for discussion, and that can often happen in a way that some faiths may find offensive.

If you are going to have religious vilification legislation, I think you would have to be very careful about excluding bona fide discussion about beliefs that, nonetheless, might be found to be offensive by adherents of a particular faith. I have thought about it long and hard and I am not sure there is a way to do that. I think the better way of dealing with religious vilification is firstly dealing with its consequences if it does escalate into violence—that should be very clearly proscribed. Incitement to violence on the basis of religion should, in my view, be clearly proscribed. We have some laws that deal with that but they are totally inadequate—Federal and State. But that is another argument for another day.

**Mr PAUL LYNCH:** I might ask you about that in a moment.

**Mr WERTHEIM:** And the rest is about education. We need to look at this in a whole-of-government way. Education and legislation must work together because legislation can only achieve so much. It can set a standard and it can have a certain educative purpose but unless it is allied to education policy—what is taught in the curriculum, how it is taught and so on—we are working against ourselves and the outcome will be suboptimal.

**Mr PAUL LYNCH:** In relation to the inadequacy of the current provisions you just mentioned, I take it you think that 93Z of the crimes Act has been entirely ineffective?

**Mr WERTHEIM:** It is too early to say. There is a complaint that has just been put forward, I understand, to the Attorney General, and we will wait to see where that goes. It is certainly an improvement on the old section 20D of the Anti-Discrimination Act, which it replaced.

**Mr PAUL LYNCH:** I think we all agree with that.

**Mr WERTHEIM:** That was a low bar, if I may say so. We then also have sections 80.2A and 80.2B of the Criminal Code, which prohibit incitement to violence on the basis of race or religion. They have been around since 2010. I do not believe there has ever been any prosecutions under them. They require proof of a double mens rea, and they are totally inadequate, too. So if we are going to move in that area I think we need to address those particular issues first.

**The CHAIR:** Mr Lynch, we are at time, I believe.

**Mr WERTHEIM:** I apologise for the length of my answers, but the questions were not simple.

**Mr PAUL LYNCH:** I have just one follow-up question. Are some of the concerns you have raised about a religious vilification provision dealt with by focusing on the vilification of an individual, rather than vilification of religion as a whole, therefore avoiding blasphemy laws and prohibiting people from having a rational discussion about the merits and demerits of religious doctrines?

**Mr WERTHEIM:** I would have to take that one on notice, if I may, Mr Deputy Chair. It is a constructive suggestion, but I think I would be concerned about arguments arising as to when it is about an individual and when it is about a group. Maybe they could be overcome in drafting; I would have to think about it.

**Mr PAUL LYNCH:** If you could take it on notice that would be appreciated.

**Dr JOE McGIRR:** Thank you all for the work you do for the community and for coming today. Mr Wertheim, thank you for your submission. I have a couple of questions in relation to that. First of all, you have recommended that a number of organisations in your community that you are concerned might fall outside the notion of a religious ethos organisation should be included. In the proposed bill, there is reference to any other body that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion—under 22K in definitions. You believe that there are some organisations that will not fall within that and should. I wonder if you could explain that in a bit more detail?

**Mr WERTHEIM:** Perhaps I could give the example of a Jewish sporting club founded in the 1930s. It does not operate in accordance with the doctrines, tenets, beliefs or teachings of Judaism, but it accommodates the needs of Jewish members who are religiously observant in a way that other clubs would not and would not be expected to. For example, if you had religiously observant members of the club who require kosher food or some other religious accommodation—not being required to play sport on the Sabbath and so on—this particular club would accommodate that; whereas, clubs in the general community would not. That is just one example. Then there are service organisations that provide provision for elderly members of the Jewish community who have not only religious needs but also particular cultural needs arising out of their historical experiences.

We have organisations that fit that bill, too. These are not organisations that necessarily operate strictly in accordance with the doctrines, tenets, beliefs, et cetera of a religion, although they make particular accommodation for that. I have therefore suggested that an additional paragraph be added to the definition of a religious ethos organisation to allow for organisations that have been established and operate to overcome discrimination or to meet special needs of a particular faith community that is not dealt with elsewhere. That is particularly germane to minority faith communities, but not exclusively for that. It would apply across the board.

**Dr JOE McGIRR:** That has given me some food for thought and is a very good example. I am not sure that it is not already covered here in the sense of what you have described to me as an organisation that is undertaking activities that are in accordance with doctrines, tenets and beliefs. So I will reflect on your answer.

**Mr WERTHEIM:** I am just saying that if you do not want this whole thing to become productive of litigation—which I am sure is not the idea of drafting legislation—it is one thing you are trying to avoid.

**The Hon. MARK LATHAM:** Can I briefly point out, Mr Wertheim, that the provision here for registered clubs is different to other parts of the Anti-Discrimination Act, recognising the point you have made about 22Y (3) and (4).

**Mr WERTHEIM:** With regard to clubs, I believe that is correct. With regard to other organisations, there is a Jewish hospital, there are Jewish aged care facilities—there are all sorts of other organisations that do not necessarily operate strictly in accordance with the doctrines, tenets or beliefs of the faith of Judaism, but they accommodate people who adhere and observe the religious law of Judaism. In a way, they were set up because general organisations in the community—general hospitals, general aged care facilities and so on—do not accommodate those needs. Quite frankly, they cannot always be expected to do so because it is just not practical for them to do so.

**Dr JOE McGIRR:** No. I understand. Thank you.

**Ms TANIA MIHAILUK:** Thank you to all the panellists for coming along today. I might follow on from the questions the Hon. Scott Farlow had started to ask of, I think, the Multicultural Communities Council. I also want some background as well. I am quite familiar with your organisation but I think in recent times there has been a bit of a change. I note there is no more public website. Mr Franklin, how does the organisation operate? It is just a volunteer group—is that right?

**Mr FRANKLIN:** Yes, completely volunteer.

**Ms TANIA MIHAILUK:** Is it just a small number of people that are now involved? I think the Ethnic Communities Council now has chiefly taken that role, has it not?

**Mr FRANKLIN:** Which one?

**Ms TANIA MIHAILUK:** The Ethnic Communities' Council has now predominantly taken the role.

**Mr FRANKLIN:** The Ethnic Communities' Council goes back and I used to be the CEO of the Ethnic Communities' Council before I retired.

**Ms TANIA MIHAILUK:** Yes. I recall that.

**Mr FRANKLIN:** We could to some extent go on about organisations and their structure and activities ad nauseam. At the Multicultural Communities Council just about all of the people on the board and involved have probably been involved with the Ethnic Communities' Council itself at some stage in the past, either informally or formally. Of course the chair, Dr Tony Pun, is the former president of the Ethnic Communities' Council. It is more involved than that. Whereas the Ethnic Communities' Council it is a lot of government grants and carries out specific project work, the multicultural council is more about taking up issues, whether they are actual discrimination issues, to assist.

**Ms TANIA MIHAILUK:** Sorry to interrupt you. So you work on a voluntary basis. You are an entirely separate body from the Ethnic Communities' Council.

**Mr FRANKLIN:** Entirely separate. There have been talks about possibly going back and merging them but they are not happening at the present stage, so completely independent.

**Ms TANIA MIHAILUK:** What is your role specifically, Mr Franklin? Your submission says you are an honorary adviser.

**Mr FRANKLIN:** Yes, I am also on the board. So I am honorary adviser to a range of ethnic based community organisations.

**Ms TANIA MIHAILUK:** In preparing the submission, it says you and Dr Pun were involved with that, was that widely distributed within your board, groups or organisations?

**Mr FRANKLIN:** Yes. We have had input from quite a range of different ethnic backgrounds on that. And generally the feeling was that they are very supportive of the whole concept of the bill.

**Ms TANIA MIHAILUK:** That is good to know. And you manage the Facebook side, is that right? Does anyone specifically manage that?

**Mr FRANKLIN:** No, they are all open on all issues to be involved.

**Ms TANIA MIHAILUK:** Oh, okay. Sorry. I did find the Multicultural Communities Council Facebook. Is that a site that you manage?

**Mr FRANKLIN:** No, one of the Vietnamese background members on the committee is doing the Facebook work and the website work.

**Ms TANIA MIHAILUK:** Basically in your discussions there was wide support for the bill within the multicultural community here in New South Wales.

**Mr FRANKLIN:** Oh, yes. Definitely.

**Ms TANIA MIHAILUK:** And did you say you had representatives there from the Vietnamese community?

**Mr FRANKLIN:** Vietnamese. The Sikh community had a lot of input. Particularly Indian-Muslim background, Vietnamese, Korean, Serbian—quite a lot.

**Ms TANIA MIHAILUK:** That is fantastic. It is good to hear that. I am very pleased, obviously, to have some sort of contribution from the multicultural community into this process. I appreciate they are a volunteer

organisation so it would be very difficult to put a very comprehensive submission. I note that your submission does not directly say that the members support the bill.

**Mr FRANKLIN:** Well, I can formally say that. In fact I thought perhaps the introduction might have indicated that. But the general feeling is that we are supportive of the entire bill and these were the only particular issues that we felt deserved individual comment.

**Ms TANIA MIHAILUK:** All right. Sorry. I am happy that you have clarified that, that you are supportive of the bill. But you would be supportive of the bill if perhaps some of these—I mean, you have not identified any legal changes here, have you? More so just particular examples that you think should at least be considered by the inquiry, is that right?

**Mr FRANKLIN:** The thrust of it really was how it related to non-believers and also that it did not create further problems instead of fixing problems. And the final thing, the particular part at the end about conciliation, Dr Pun himself put that part in, to really streamline issues rather than going to an expensive and very formal tribunal process that is the first outlet. And the only other thing I should mention, with the opportunity, is that a lot of times religion goes hand in hand with cultural identity and ethnic background. You often have people identifying with a religion but may not be believers, but because that religion is so much a part of their ethnic and cultural background they associate with that religion. So it is not that the religion ends here and ethnic discrimination might start over there—they are very interrelated.

**Ms TANIA MIHAILUK:** Dr Pun is of Chinese heritage.

**Mr FRANKLIN:** Yes.

**Ms TANIA MIHAILUK:** So he is quite well known in the Chinese community.

**Mr FRANKLIN:** Very well known, yes.

**Ms TANIA MIHAILUK:** And there is broad support. It is good to hear that there is good support there from the multicultural community so I just wanted to thank you for your submission.

**Mr FRANKLIN:** Yes. Okay.

**Ms ROBYN PRESTON:** Welcome, gentlemen. I have a fairly brief question for Mr Wertheim. You talked about the exemption for organisations who engage employees or contractors as ambassadors. Can you just expand or elaborate on that?

**Mr WERTHEIM:** As brand ambassadors?

**Ms ROBYN PRESTON:** Yes.

**Mr WERTHEIM:** It was just given as an example of a situation where some constraint on what an employee could say even outside the work environment might be legitimate. It is conditioned, of course, on the employer and the employee having agreed on that up-front and the relevant conditions having been spelt out in the employment contract or some other document so that it is very clear that the employer and the employee agreed to those constraints as a basis for the employment.

**Ms ROBYN PRESTON:** So if the employee went outside of that it would be grounds to dismiss the person.

**Mr WERTHEIM:** It would be a breach of the contract of employment.

**Mr JIHAD DIB:** Thanks for coming in. It has been really great listening to all the different responses. Mr Wertheim, I just want to say I agree with you on the issue about the religious ethos organisation. As you were talking about in particular the soccer team and playing on the Sabbath and the food, I was just thinking about a lot of things that happen in my community that are very similar. I know also the Sikh community has those similar circumstances. So I think that was a really good point and lots of food for thought for me in terms of the definition of a religious ethos. And then of course when you spoke about some of the centres that were set up and the point of bringing people together and of course there is the suggestion about the link.

I have a short question, if I can, and it goes to the Multicultural Communities Council. You mentioned just a little bit then about the conciliation panel. How much has that been thought through in terms of a practical process and do you believe that it would be more helpful that there would then be legislation or rules and regulations as to what they can reconcile over? Because I would be concerned that if there were no rules and regulations in terms of legislation, people would not go and reconcile and you could have people just go in there for the most nefarious of reasons and we could miss the serious things. I suppose the question is: How would it

work? You have answered it with Ms Mihailuk's question in terms of whether it would work with support of this legislation. Or do you see it a different way?

**Mr FRANKLIN:** A full background working of how it might work has not been done but certainly we did see it as processing through this legislation. It really arises out of what is perceived within many ethnic communities. It is a very difficult and complex process to raise issues of discrimination. The processes, the language, the understanding, access to websites—all this provides great difficulty for them. It is really seen as a way of facilitating and engaging in some sort of resolution-type process, keeping it and feeling that most of the issues could be resolved through simply face-to-face contact and understanding each other without making it too formal in the initial process. I am the honorary advisor to Sutherland Shire Council on multicultural issues. We sat down only two weeks ago to look at their new website on multiculturalism and even the staff could not find where they had hidden it in the background of the website. This often happens.

**Mr JIHAD DIB:** I agree with you about things being resolved quite easily and there is probably a better way to resolve them. But the fact of the matter is that there will be instances—and Mr Lynch also raised this—of not only discrimination but obviously vilification specifically against an individual. I know of many individuals who have experienced that as a result of their particular faith, whatever their faith may be. But the rules are in place and I suppose bringing people together is really important. I would like to explore that a little bit more, not now but even down the track. Certainly I would think though that in the first instance you would actually have to have a set of rules and regulations so that when somebody has got something to be resolved, you are actually trying to resolve it within a framework that already exists.

**Mr FRANKLIN:** Yes.

**Mr ALEX GREENWICH:** I have a quick question for Reverend Hansford. Many LGBTI Christians have found a safe home within the Uniting Church. Could you maybe speak to the discrimination that the LGBT community have found from potentially other religious organisations and the work that your church has done to help bridge that gap?

**Reverend HANSFORD:** Sure. That is certainly true. I would not want to say it is solely the Uniting Church. There are many congregations across the spectrum in terms of their welcome and hospitality. In terms of the Uniting Church we have worked very hard to understand our faith and our theology following Jesus Christ as being one of hospitality, welcome and the valuing of human beings in terms not of their gender identity but simply of being human beings. We would want to strongly affirm that. Part of the challenge for us has been—we mentioned the comprehensive approach to the human condition rather than picking one particular issue so, as a result, LGBTIQ Christians and non-Christians are not just welcome but offered hospitality and a place in that community. We would affirm that for—Alex, you would know too, being involved with our drug treatment campaign, about seeking to provide ways of recognising the full humanity of individuals rather than simply seeing them as being a single issue kind of person, absolutely.

**The Hon. GREG DONNELLY:** My question is also to Reverend Hansford. In the current New South Wales Anti-Discrimination Act there are specific exemption provisions for faith-based schools. They obviously create an ability for those schools to have some direct control over the people they employ and not employ, as the case may be, with respect to those persons' subscription to the doctrines, beliefs and tenets of those respective faith traditions. Is it your position that those exemptions—and others have described them as discrimination, I might say.

**Reverend HANSFORD:** They have, yes.

**The Hon. GREG DONNELLY:** It is not language that I would use. Is it your position that those exemptions are such that they do in fact create discrimination and should be removed from the Anti-Discrimination Act in New South Wales?

**Reverend HANSFORD:** I am not a lawyer so I would not want to comment about that actual removal, but I think the word "discrimination" can be used both positively and negatively. If you are using it in the negative sense, I think there are some cases—

**The Hon. GREG DONNELLY:** It is not my language.

**Reverend HANSFORD:** I apologise.

**The Hon. GREG DONNELLY:** I am just describing what others have called it. I am talking specifically about the exemptions that, for example, give Knox Grammar, Newington College and Pymble Ladies College—these Uniting Church supported schools—an ability to employ or not employ persons in terms of their subscription to the doctrines, beliefs and tenets of the Uniting Church. Is that your position that those exemptions should stay or not stay?



**Reverend HANSFORD:** I guess my comment would be that it depends on how they applied. For example, if it was because that person was slightly outside our understanding of the tradition of the Uniting Church, that would be a difficulty for me. But if it was somebody particularly hostile, I understand why that would be an application of that understanding of the guideline.

**The Hon. GREG DONNELLY:** Well it is not a guideline. It is the law.

**Reverend HANSFORD:** Law, sure.

**The Hon. GREG DONNELLY:** So your position is that you are flexible.

**Reverend HANSFORD:** Yes.

**The Hon. SCOTT FARLOW:** My question is on the section 22N recommendation that Mr Wertheim made. To cut through some of the language around it, I take that this is, in a sense, an Israel Folau situation, where you would have somebody who is identifiable with the brand who makes a pronouncement which would not be in keeping with their contractual—is that correct? Am I right to boil it down to that?

**Mr WERTHEIM:** I think basically you are right. What we are saying is that, with that sort of situation, the law should mandate a much clearer statement of the constraints that will apply to the employee upfront than was apparently the case with Israel Folau. I do not know all the details of the case. I only know what was reported in the media. It seems that the clarity of the constraints that were upon him were not as clear as they might have been.

**The Hon. SCOTT FARLOW:** So effectively there is a positive onus on the corporation as well as on the individual to comply with that and the law in that regard should not seek to interfere with that contractual arrangement if that contractual arrangement is in fact clear.

**Mr WERTHEIM:** If it is clear and freely arrived at.

**Ms JENNY LEONG:** Mr Franklin, it would be good if you could take this on notice and provide further clarification. It is interesting that your organisation made a submission that does not outwardly support or not support the bill. I appreciate you have just given us the organisation's support for it here. I just wanted to point out that Equality Australia and other organisations have actually highlighted concerns that this bill will create unequal protections for people of different faiths and the risks around that. It would be appreciated if there could be consideration of that and a response to that from your organisation in relation to support of the bill or otherwise.

**The Hon. GREG DONNELLY:** Point of order: The proposition being put by the member is for the witness, who has made a clear, unequivocal statement, to in fact either now reverse that at this Committee hearing or go away on notice and come back with an answer which reverses his position.

**Ms JENNY LEONG:** To the point of order—

**The Hon. GREG DONNELLY:** No, I have not finished. This is certainly an overused word these days, but that is outrageous. The witness has made a clear position on behalf of the organisation. It was not pulled out of him like a wisdom tooth. He voluntarily gave it, so I would ask that the Chair rule out of order the suggestion that he should go away and reverse his position.

**Ms JENNY LEONG:** To the point of order: That is an absolute mischaracterisation of the question that I asked.

**The Hon. GREG DONNELLY:** No, it is not.

**The CHAIR:** Excuse me. I am hearing from Ms Leong, Mr Donnelly.

**Ms JENNY LEONG:** What I was asking—and Mr Franklin did not look at all concerned, but I apologise, Mr Franklin, if anything that I asked in relation to the question in any way offended you or somehow undermined the contribution that you made. I very much respect the contributions of all the witnesses. I was alerting the witness to a submission made by another organisation, as Mr Donnelly has done on a number of occasions on this and previous panel. I was asking if Mr Franklin could take that on notice, being aware of the time and the fact that trying to make a copy of that submission and provide it to Mr Franklin now would not be possible. I am asking him whether he or the organisation can respond in relation to those observations, particularly around part 4 of the Equality Australia submission on the risks of this bill providing unequal protections for people of faith.

**Ms TANIA MIHAILUK:** Point of order: We are sort of asserting that there was some fact in that particular submission that this panel member now has to address and may not be in a position to be able to address. I do think it is a bit of an unfair question, Ms Leong. Perhaps you could reword it. I think you are actually asking

them to make an opinion or perhaps a legal opinion or view on a matter that may not be asserting a fact but might be only an opinion of Equality Australia.

We have not yet done this today in any of the supplementary questions that we have sought from panellists. I am conscious of that. We have not done that yet so it certainly sets a precedent to start asking people to do that. I note Mr Franklin has made the point that they are a volunteer organisation. I do not know whether there is a capacity there to start doing particular research and seek legal advice or assistance in responding to the question that Ms Leong has put.

**Mr ALEX GREENWICH:** To the point of order: The dangerous precedent being set here is an attempt to prevent a member of this Committee from asking a question and seeking clarification. If we are going to allow members to do that, that is a very dangerous precedent to set. All Ms Leong was seeking to do was ask for clarification and give Mr Franklin time to take that on notice and respond to it—not controversial at all.

**Ms JENNY LEONG:** I am happy to rephrase the question along Ms Mihailuk's lines if that is appropriate to the Committee. I am very happy to make sure that everyone is clear that I am not somehow challenging Mr Franklin's witness testimony or the submission of the Multicultural Communities Council of NSW. I am happy to rephrase that in the interests of time. In the submission as I read it, there is not a clear position articulated as to whether the Multicultural Communities Council of NSW is supportive of the bill or not. I appreciate in your testimony that you offered the organisation's support for the bill and I respect that offer of support. I wanted to then highlight to you the fact—and I am happy for you to take this on notice—that there have been concerns raised that there are unequal protections offered for people of certain faiths. People of certain faiths will have potentially more protections than others under this bill as an unintended—or we cannot know the intention of the drafter and I should not assume, but as something that may be a concern.

**Ms TANIA MIHAILUK:** As per Equality Australia's view.

**Ms JENNY LEONG:** I am happy to ask for that to be provided to you. But I would appreciate further comment on your support for the bill given the concerns that have been raised by some others particularly around the intersection between human rights protection on issues of race, for example, as it is weighed up and balanced with issues around religion and ethno-religious considerations.

**The CHAIR:** Mr Franklin, are you happy to take that question on notice?

**Mr FRANKLIN:** Yes.

**The CHAIR:** Thank you very much for your patience. I thank our witnesses, Mark Franklin, Peter Wertheim and Reverend Simon Hansford. Thank you for your time.

**(The witnesses withdrew.)**

**(Luncheon adjournment)**

**JONATHON HUNYOR**, Chief Executive Officer, Public Interest Advocacy Centre, affirmed and examined

**LESLEY LYNCH**, Convenor, Human Rights Action Group, NSW Council for Civil Liberties, affirmed and examined

**SIMON RICE**, Member, Australian Discrimination Law Experts Group, affirmed and examined

**The CHAIR:** Thank you for joining us today. I want to thank you very much for making the time to come and join the Committee. We have a large Committee of members of both the upper and the lower House of the Parliament of New South Wales. The way that we will run proceedings is to go straight to questioning.

**Mr ALEX GREENWICH:** At the outset, I thank you all for the work that you do to support a civil and harmonious society. I ask my first question to Mr Hunyor of the Public Interest Advocacy Centre [PIAC]. We heard evidence earlier today from Twenty10 and other groups about how this bill will disproportionately have a negative impact on some vulnerable groups, including LGBTI people, and potentially put up barriers to accessing healthcare and housing as well. I was hoping that given the work that PIAC does in supporting some of the most vulnerable in our community, you could go through what are your concerns with this bill.

**Mr HUNYOR:** Sure, thanks for the question. The position PIAC takes is that we support religion being included in the Anti-Discrimination Act as a ground protected against discrimination, but we think it should be done in classical terms in the same way that the other grounds are protected. We are concerned that this bill departs from that in a number of ways that undermine other protections in the Act, privileging religious views and organisations in a way that tears at the fabric of the Anti-Discrimination Act. It is not the right way to go. Some of our concerns relate particularly to the protected activities in employment, for example. They are very broad provisions that will make it very difficult for employers particularly in small businesses to maintain diversity and inclusiveness in their workplace, which are really important from a business case perspective if nothing else. It adds real complexity there.

The protections that are given to religious ethos organisations are also exceptionally broad. There is a real danger that they will mean that religious ethos organisations may be able to refuse to provide services, particularly if you imagine circumstances where there are limited providers of services in remote or regional areas. Many of the larger religious organisations do fantastic work. But in circumstances where they also have quite a lot of power, if they are to use some of these provisions to deny access to people on the basis of religion—very broadly defined here—then there is a danger that people will be denied access to basic services. They are some of the concerns that we have. We support the protection but we think that this is not the way to go about it. We think that there is a strong case that the bill—helpfully, in some ways—identifies that the Act really needs an overhaul. We need to review the whole Act so that we can modernise it, update it and include religion amongst other things so that it hangs together as a piece of legislation that protects people in New South Wales.

**Mr ALEX GREENWICH:** Thank you. Dr Lynch, did you want to add anything to that, at all?

**Dr LYNCH:** I agree with all of those statements. I would add one extra point that in an era where increasingly services to disadvantaged people are being privatised—and quite often that means that has been picked up by religious-related groups—this issue gets to be increasingly serious. When you run together all of the provisions in this Act, you get right to that point where you are dealing with a religious ethos organisation with protections around protected activities and with religious ethos organisations being excluded from any of the constraints on that. The potential for all sorts of groups of people reaching out for services which would have, in a prior time, been delivered by the Government—adding to that, also, the fact that a religious ethos organisation does not have to abide by the law.

The protections that we urge in that context now are, when you are handing over services, make sure the contract specifies what services be supplied. Well, that now does not necessarily hold. That contract now can—that part of it can just be rejected. I guess I am coming from the same point that we want to see a good human rights charter for New South Wales, to start with, to create a framework. But we want to see the Anti-Discrimination Act updated. We want to see, and we have supported for a long time, strong religious discrimination protection. Again, it is like the Commonwealth bill—the great disappointment that this one throws in so much that means it is impossible to support this bill unless you abandon a whole lot of other people and other contexts.

**Mr ALEX GREENWICH:** Did Professor Rice want to add anything in the 30 seconds left?

**Professor RICE:** No. I am sure it will come up later. Thanks, Mr Greenwich.

**Mr ALEX GREENWICH:** I may have subsequent questions later on.

**The CHAIR:** Of course. Mr Latham?

**The Hon. MARK LATHAM:** Thanks, Chair. I wanted to go to the PIAC submission, which, at page 4, seems to present the view of the three groups represented fairly succinctly. It complains that the bill:

... gives excessive protections to religious organisations compared to other groups ... undermines the anti-discrimination protections enjoyed by other protected groups ... allows unnecessary and unjustified discrimination by religious individuals and organisations ...

I just wanted to bring to your attention the briefing we received from the Justice department in New South Wales, who were asked the question, "Is there a risk that this bill creates a hierarchy of protections where religious freedoms are placed above other protected attributes within the Act?" Their answer was "no". How do you explain that the legal experts in New South Wales have got a view that is entirely 180-degrees different to your own? Are you really here on legal grounds or political?

**Ms JENNY LEONG:** Point of order: I am not sure if the advice—I understand that was a private briefing that we received from the Department of Communities and Justice [DCJ]. I am absolutely not trying to change, like members tried to do to me before, the question that Mr Latham is asking.

**The Hon. MARK LATHAM:** Yes, you are.

**The CHAIR:** Please, no commentary.

**Ms JENNY LEONG:** But I do think it is reasonable that the witnesses would be able to see the response from the Department of Communities and Justice in full before replying to that. My understanding is that we did not get any one word "yes" or "no" responses from the Department of Communities and Justice. It was quite a complex and detailed discussion and briefing where they appreciated that they were negotiating the fact of giving advice to this Committee despite the Government not having a position on this One Nation bill or not. And so, I think it is either reasonable that the witnesses are provided with the full response and briefing from the Department of Communities and Justice and then given the chance on notice to respond, or that Mr Latham chooses to ask a different question. I do not believe that Mr Latham's interpretation of what the Department of Communities and Justice told us in the briefing is something that can be taken as fact.

**The Hon. MARK LATHAM:** To the point of order: I deeply resent the insinuation that I am misleading this Committee and that I am not giving factual information. I would ask for that to be withdrawn.

**Ms JENNY LEONG:** The fragility is high, Chair.

**The CHAIR:** Excuse me—no commentary. I am hearing from Mr Latham.

**The Hon. MARK LATHAM:** I further say on my point of order that it is no longer private information because I raised it this morning in the public session.

**The CHAIR:** Mr Latham, would you like to address your question to the witness again?

**The Hon. MARK LATHAM:** I did. Are you ruling my question in order? There has been a point of order against it.

**Ms JENNY LEONG:** To the point of order: I am not trying to prevent Mr Latham from asking the question. I am simply saying that I think it is completely reasonable, if we are talking about complex areas of law, that the witnesses would be provided with the full response and brief of the Department of Communities and Justice before they are asked to respond to the simple, one-word version of how Mr Latham presented their briefing to us, which I understand went for an hour or an hour and a half.

**The Hon. MARK LATHAM:** Yes.

**Ms JENNY LEONG:** I am not trying to stop it. I am just trying to say that I think it is reasonable that in being able to respond to the question, the witnesses are provided with the details of the brief so they can adequately respond to DCJ's briefing and their opinion on matters of law in relation to this bill.

**The Hon. MARK LATHAM:** To the point of order: I am here as a member of the Committee asking what I believe to be a factual, well-founded question that previously has been before this Committee. That is why we are here, to deal with facts, not the reality that the member for Newtown does not like the question or does not like the evidence.

**The CHAIR:** No, please.

**The Hon. MARK LATHAM:** That is all she is complaining about.

**The CHAIR:** Members, I am asking for respectful interaction. We are here to hear from the witnesses. They are giving freely of their time to us. This is an opportunity to hear from them. I do understand the points of concern that have been raised by respective members—

**Ms JENNY LEONG:** Chair, I ask you to make a ruling on the point of order. I am suggesting that the witnesses be provided with a copy of the Department of Communities and Justice briefing and then be able to respond to Mr Latham's question.

**The CHAIR:** Mr Latham, would you like to address your question to the witnesses and let us move forward?

**The Hon. MARK LATHAM:** I asked my question. Yes, sure—

**The CHAIR:** Let us move forward, please. I ask the Committee to allow us to continue to hear from the witnesses, who literally have not been able to say terribly much on the record at all. Thank you, Mr Latham.

**The Hon. MARK LATHAM:** If my question stands, I would invite an answer.

**Professor RICE:** As you were posing the question, Mr Latham, disregarding anything that has been said since, my thought was that I do not know that I can answer that without knowing the basis on which somebody came to that view. It is not a view I have heard expressed by any other people. We hold ourselves out as experts. I would very happily engage with that reasoning and understand how they came to that view and offer you my alternative. But unfortunately a simple "no" is not something I can answer.

**The Hon. MARK LATHAM:** Well, we had two law professors this morning articulating the same point of view.

**Professor RICE:** I have not heard their evidence.

**Mr HUNYOR:** Mr Latham, the submission of PIAC sets out the basis that we make that claim. I accept that other people will have different views. That is one of the difficulties with discrimination law generally; it is exceptionally complex. One of our concerns with this bill is that it makes it even more complex because it departs from a lot of the things that we already do know about how discrimination law works. It departs from what we have got interstate. So, we cannot, for example, look to Victoria or the ACT and say, "Oh, that's how a discrimination provision works," because it is so bespoke. That creates concern for us.

I accept that other people have different views. I do not think that means our position is ideological and not legal. It just means that it is complex and this will make it further complex, which we think is not good lawmaking because the law should be easily understood. The fact that it is something that experts in good faith will disagree about just highlights the very nature of the problem with the legislation. We agree with what it seeks to achieve: protecting people from discrimination on the basis of religion. I think we all agree with that. It is just a matter of how we go about it. We say with respect that this is not the way to do it.

**The Hon. MARK LATHAM:** If I could go to Dr Lynch on page 6 of the submission from the Council for Civil Liberties where you are describing Israel Folau and Margaret Court as hateful individuals—is it your submission that the Christian doctrine of belief in salvation is a hateful doctrine?

**Dr LYNCH:** No, and I am not quite sure that I described them as hateful. I think what I was saying, and without rereading my text, I think what I would have been saying is that part of that controversy was other Christians objecting to what they had felt what Folau had said and objecting to Margaret's position - constantly repeated - as being, from their perspective, unchristian and being, I think I said, regarded their views as being hateful towards others. It is an accurate description of how the public debates around both of these long-running issues have run. I was making the point that it was not an attack on Christianity that was going on there.

**The Hon. MARK LATHAM:** Right, and what are the comments of Margaret Court that you are regarding, and I quote, propagating hateful and harmful views. They are your words. What are the comments of Margaret Court?

**Dr LYNCH:** I think the words I had in mind there were— and I say that I am not describing them as hateful. I am describing—I think I should read my own words—I think what I was trying to say was it was not other groups versus Christians debate entirely. In many ways, both of those debates had been between Christians and Christians over what they regard as acceptable, compassionate Christianity and what so many Christians saw Folau's comments certainly as being hateful. I am not sure that is how I saw them but that is how many Christians saw them. Margaret Court's position—

**The Hon. MARK LATHAM:** Well, I was on his list many times and I did not regard anything hateful about it. You would have to be a snowflake to go down that pathway.

**The CHAIR:** Mr Latham will let Dr Lynch finish. Dr Lynch, have you finished the answer to Mr Latham's question?

**Dr LYNCH:** I have finished my answer.

**Ms JENNY LEONG:** Thank you so much, Chair. Professor Rice, the recommendation of your submission is that there are too many flaws in this bill. There are a number of flaws in this bill that the experts on anti-discrimination law have flagged would be of concern both in terms of fundamental rights and also the freedoms of others. I wonder if you could highlight what you see would be the main flaws if this bill were to pass and become part of our Anti-Discrimination Act in New South Wales.

**Professor RICE:** I think the way you finished, Ms Leong, is where we would start. This is not an amendment that properly becomes part of the Act. It is conceptually an entirely different approach. We have over 40 years of legal authority from the High Court through the New South Wales Supreme Court down to the tribunal, as well as drawing on the law in other States that the community rely on. Businesses, human resource managers and so on know the way the Act works. They give effect to the requirements of the Act. They treat that Act as a code for their behaviour. If this Act amended the current Act within that framework and added religious belief or something similar to it as a protected attribute, I would not be here I should not think. But it does not do that. It tries to change one part of the Act into what it is not. We do not have a human rights Act in New South Wales.

**Ms JENNY LEONG:** And a shame that is, but that is for another inquiry.

**The Hon. GREG DONNELLY:** Thank goodness for that.

**Professor RICE:** I do not express a view. I just make the point that this bill is different. These amendments are different because they invoke concepts of freedom that belong in a human rights discussion. The Anti-Discrimination Act is a protective piece of legislation which protects people against conduct. It does not promote, and some people have said weaponise, an attribute to enable that attribute to be used. It is protective. The fundamental conceptual design problem is that the bill does not speak to a discrimination Act, it speaks to other issues in its extended form. If we pulled it back then we could fit it into the discrimination Act in the normal way.

**Ms JENNY LEONG:** Thank you. The submission made by the Council for Civil Liberties points to the fact that in section 3.3 (1) and 3.3 (2) of the bill, I believe it is basically a reference to the ICCPR and then you have a reference to article 18 of ICCPR but not just the whole article, which those of you who would be aware would be aware of freedom of belief and thought, but then just identifies article 18 part three and highlights that as an overarching object of the entire Anti-Discrimination Act. In your professional experience in these matters, are any of you aware of other anti-discrimination legislation, or indeed any other legislation, that would identify a subsection of an article in an international convention and place it as a way of enshrining that international convention into law? And whether you see that there are any problems with the idea of pulling out a subsection of one article of ICCPR that may contradict international Human Rights Law Alliance standards or practices?

**Professor RICE:** The Queensland Act does actually invoke, in general terms, the ICCPR as its basis. The New South Wales Act precedes a human rights consciousness in Australia. The 45 years of legal jurisprudence that helped us understand what the Act means has not been informed by international human rights. One of the comments I have made elsewhere is to criticise the Act for not being informed by, for example, the sex discrimination provisions being informed by Convention on the Elimination of All Forms of Discrimination Against Women and so on.

**Ms JENNY LEONG:** Indeed.

**Professor RICE:** So, it simply makes no sense now to try to recast the Act as a human rights Act when that is not what has been and not what the rest of it is. That speaks to just conceptually what the proposed section 3 does and then, as you say, Ms Leong, within that if you were going to have a discussion about what human rights instruments might inform an Act. I just emphasise that you cannot say that of this Act. If you were going to draft something new—and plenty have referred to New South Wales' desperate need for a new Anti-Discrimination Act—then you would talk about what went in there. And you are right, I find it hard to imagine that I would invoke a provision in one of the covenants as somehow being relevant to the whole of the Act. I have not seen it done elsewhere; conceptually I do not see how it works. It is more than anomalous. I really find it hard to make sense of it but I lift it up to the more general point. That the provision does not belong in this Act. It belongs in another piece of legislation.

**Ms JENNY LEONG:** Chair, I wonder if Dr Lynch or Mr Hunyor wish to respond to that.

**Dr LYNCH:** I would just make one additional point to that to say what is missing here is that the International Covenant on Civil and Political Rights also says very explicitly that religion is not an absolute right, so again this is all going in one direction. The bits that are quoted. I agree with a, b, c and d and 2 but you would need to put similarly all the rights and similarly religion is not an absolute right.

**Mr HUNYOR:** And I do not have anything to add.

**Mr PAUL LYNCH:** Mr Hunyor, you said earlier in your evidence that there were some difficulties with the bill in relation to complications with small business. I was wondering if you could take us to that in a bit more detail.

**Mr HUNYOR:** Sure. Look, there are a number of examples I could give. I was just looking at, for example, the protected activity provisions earlier and trying to get my head around, as an employer myself, how I would deal with it. Under this provision, for example, I could have a manager who at midnight from their work laptop at home—so they are not during work hours, they are not at work—send something around to all staff explaining why various members of staff are sinners and are to be condemned. This Act says I cannot discipline that person for that. I cannot discipline a manager for sending something to all staff from their work laptop. That makes it very hard. As I say, whether or not an organisation is committed to other values or other ethos, put that one side. Just as someone trying to run an organisation and keep people working well together as a team that is incredibly difficult. That is just one example.

I think the explanatory notes give the example as well of the satanic customer at the publisher where it contemplates that someone comes seeking a pamphlet to be published with certain religious views and a member of staff who objects to that on religious grounds says they do not want to be involved in that. What the note suggests is that if there is no-one else available then the publisher should send that to another business, so the publisher should lose that business and send it elsewhere because that would be reasonable and proportionate. It would be unreasonable to require the staff member to publish that against their views. That places a publisher in a very difficult position where they would be discriminating against a client by refusing them service but risking an action against them there or, according to this example, it would be unlawful for them to force their employee to print that if they could send them somewhere else, then they could take their business elsewhere.

It is those sort of examples, and I have looked at the AI group, for example, and their submission is littered with, unworkable and confusing. Human resource departments have a really tough job and, as Professor Rice has said, we kind of know how discrimination law works and because this messes with that formula, with respect, it just makes it really difficult. I mean, I am meant to be a lawyer that understands these things, and it causes me to break out into a sweat as to how I would make this work in my workplace and do justice to all of the different interests I am trying to support.

**Mr PAUL LYNCH:** One of the things raised in your submission is support for religious vilification provisions. We heard some evidence this morning suggesting that because religious belief is quite different to ethnicity in that you can choose your religious belief but not your ethnicity, that it is perhaps inappropriate for vilification provisions to be introduced in relation to religion. I wonder what your response to that might be?

**Mr HUNYOR:** We think that it is still something that is important to include because we know religious vilification is an issue in our society. We have seen it directed against, particularly people from the Islamic faith, and we think that it is appropriate that it be protected on the same bases as other grounds. I appreciate that there is that distinction but we think it can be done appropriately in a way that provides that sort of protection. The language of the section already sets a fairly high bar, so it is not similar to 18C in terms of its language around offence. We think that gets the balance right. But, as I said before, we appreciate that people of good conscience will have different views on this. That is how we think the law should deal with that issue.

**Professor RICE:** Mr Lynch, could I very briefly draw the Committee's attention to the fact that religious vilification legislation has existed in Victoria for some time. There is a fairly notorious case, the Catch the Fire Ministries case, which really helped us understand how it works. I think it is invidious to start giving examples of one faith against another. The way religion is defined in this Act you could have vilification within religion because you have got one schism having a go at another. That is a side point. My point about Victoria is, it works. It is a very important public statement of principle that the State is there to ensure that people are not subject to hatred because of their religion.

I do not think the optional adopting of religion is a relevant distinction from being born with an ethnicity. The fact is you are subject to hatred, and Victoria legislates to give effect to that. The Catch the Fire Ministries explained that there is a difference between attacking a person personally and expressing views about their religion. As long as we understand that, then I have to say I think it is a fairly unremarkable proposition.

**Dr JOE McGIRR:** Thank you to all of you for your work, as Mr Greenwich earlier alluded to. I come to this issue about how we just need a new anti-discrimination Act, and leaving aside the issue about how long that would take, I picked up that the current Act somehow is pre the human rights discussion and framework, although I would have thought it was, at least in part, in response to discussions around human rights in the post-World War II period. You have indicated that somehow it is outside that discussion. The proposal here is to include the references to these international covenants, and this has been recommended by the Ruddock review as well. I do not understand how that tears at the fabric of the Act. I wonder if you could explain that in a bit more detail? It seems, frankly, a bit illogical and to me this concept that what we really need is a complete new Act seems to be effectively putting this off, frankly, because that would be a long exercise, and we currently have a gap in the legislation. Any of you?

**Professor RICE:** We agree with you, Dr McGirr, there is a gap, and it is not a question we do not mind, we actively want to see the gap filled by protection for religious belief. I trust that reassures you that, yes, the gap should be plugged. We have noted that the Act is old and problematic, and yes, it is a desire to have a new one. But I agree with you, I do not know whether or when that will happen. We are not saying hold off, do not do anything, leave it alone. We are saying, by all means use the Act as it is and plug the gap, and then it becomes a debate about the additional elements of the bill that go beyond that and introduce new concepts into the Act. You have asked about one of those, and that is the proposed section 3. I hope that reassures you about your concerns about—

**Dr JOE McGIRR:** I am asking about section 3.

**Professor RICE:** As for waiting for a new Act and plugging the gap, we agree, and you are right, we do not wait, we fix it. Then as for the add-ons, the additional provisions, like section 3, I confess that technical examples come to mind, so I will do one briefly. Under our Anti-Discrimination Act one of the distinctive features of this Act is the extensive range of exceptions that exist, in general terms, most attributes are subject to exceptions. We have an understanding of that from the High Court decisions as to how the exceptions work. Lawyers give advice, human resource managers act on it, service providers get their advice. The way those exceptions work, Dr McGirr, is not consistent with international human rights law. The ICCPR, the guarantees that section 3 would introduce, introduce an entirely different calibration of rights, protection of rights and exceptions.

We have got a body of law and understanding of how exceptions work under the Act and international human rights law takes a completely different approach. If you were to say to me now, if this was in operation, "How should I read the exception under the Act?" I would not be able to look at the text book I have written—if you do not mind my saying. I would say, "I have got to write a new book and I have got to work out how the courts will in future bring international human rights law principles into this Act now." I hope that illustrates just in one small way the inconsistency between the two.

**Mr HUNYOR:** Dr McGirr, from the Public Interest Advocacy Centre's perspective, our response is very similar. Our preferred position would be let us review the Act, a lot of it is outdated, there are gaps, there are a whole lot of things that we could do. But we support introducing religion as one of the grounds and we think that should be done in the same way that the other grounds are protected. So, a straight bat, we just introduce discrimination without the bespoke aspects of this bill, which are potentially confusing, which we say privilege rights over others. But the idea of simply inserting religious discrimination in a standard way is something that we support and we do not say that that would in any way tear at the fabric of the Act.

We think that would be a good thing. Our concern with the objects clause is similar to what Professor Rice has said. Because it is selective in the way it goes about it, it starts to make it very hard to apply the law and to understand the law clearly, but also it seeks to skew the interpretation of provisions of the Act in favour of religious belief over other grounds. That is where we say there is undermining, it is because of the way this Act goes about it, not in principle the idea of protecting.

**Dr JOE McGIRR:** Can I clarify that. It is not the introduction of the reference, it is the international instruments, it is the specific reference to religion in the way those are introduced?

**Professor RICE:** That was not my position, I hope.

**Dr JOE McGIRR:** No, that is not your position, but Professor Rice—

**Mr HUNYOR:** We have concerns about the selective way in which it is done, and it goes back to the answers before to Ms Leong's questions.

**Dr JOE McGIRR:** I understand that, but my question was broader than that. You seem to be saying that the introduction of these international instruments tears at the fabric of the bill. Leave aside the issue that you



think the way they are introduced privileges religious discrimination, you seem to be saying that the introduction of reference to these instruments tears at the fabric of the bill, and I am interested in that view.

**Mr HUNYOR:** Because what is done is not a comprehensive introduction of, for example, all of the human rights instruments to which Australia is a party. It seeks to pick certain ones out, certain parts of certain provisions in a way that is incredibly hard to apply and we think distorts the operation of the bill. That is our concern. We are largely in uncharted waters because we just simply do not know. Something like this has never been done and that is a concern for us. As lawyers we tend to look to precedent to understand how the law is going to work and we really do not know, because this is unique.

**Ms TANIA MIHAILUK:** I think I understand your viewpoint now and it appears to be a little different from other members of the panel. Did any of you make a submission to the Ruddock review?

**Mr HUNYOR:** Yes.

**Dr LYNCH:** Yes, we did.

**Professor RICE:** Yes.

**Ms TANIA MIHAILUK:** That is interesting to know. There were recommendations from the Ruddock review, particularly recommendation 16 pointing out that New South Wales and South Australia had a shortfall. Is there anything that the PIAC can suggest to amend the bill that will reach the view you have?

**Mr HUNYOR:** For example, some of the provisions start off with a classical formulation but then they add on a bit. If you look at 22N it states:

**22N Discrimination against applicants and employees**

(1) It is unlawful for an employer to discriminate against a person on the ground of religious beliefs or religious activities—

(a) in the arrangements ...

But, then 22N (3) introduces a brand-new concept that it is unlawful for an employer to restrict in relation to protected activity. So 22N (1) is what we would expect, it is the same as you would see in the race provisions and 22N (3) gives us something new. Similarly, if we look at 22L it refers to the definition of discrimination. Again, 22L (1) gives us the standard and 22L (1) (b) gives us indirect discrimination. We are familiar with those and we can make sense of those. But, then we have 22M which gives a special provisions that apply to religious ethos organisations. It is those sorts of departures from the standard form that concern us, that mean that it does not, we say, do what the Ruddock review suggested. It did not recommend a religious freedoms bill, it did recommend a religious discrimination bill, and that is what we say, no more no less than what you get for race or for sex or for disability or for age, the equivalent provisions should apply.

**Professor RICE:** Just following on briefly from that and Dr McGirr's question, I want to address a possible misconception. We are not concerned with what I call the added on bits simply because there is a question of neatness and they do not fit. We have been emphasising the need for consistency because of the coded nature of the Act giving guidance to people who have to act under it. If you look at the Discrimination Law Experts Group's submission in answer to your question we have suggested what might come out so you are left with the amended Act that you are looking for. But, we are not just taking them out for neatness, we are taking them out because, as it happens, this comes back to Mr Greenwich's question, a lot of what is there in the add-ons are really problematic themselves. Just to emphasise, it is not lawyers neatness wanting consistency, as it happens what we want to take out we want to take out because of the very problematic implications they have that we have addressed earlier.

**Ms ROBYN PRESTON:** I was listening with interest to comments by Dr Lynch and Mr Hunyor in relation to your concern about religious ethos organisations and their behaviour if this bill was passed; that they would refuse to provide services and deny access to some basic services. I wondered how or what evidence you have of this to make that claim?

**Mr HUNYOR:** I am not saying they necessarily would, I am just saying that they could from a legal perspective. It is something that the Committee will need to decide whether it wants them to be able to do or not.

**Ms ROBYN PRESTON:** It is a fairly broad statement to assume that, do you not think?

**Mr HUNYOR:** We have to analyse a law to see what is permitted and what is prohibited after it. For example, if I were to buy a shop at my local shops and let us say I live in a remote area where it is the only shop nearby and if I have very strong religious beliefs and I decide I am going to run that shop according to my religious beliefs then that becomes a religious ethos organisation, I can do that. Then, if I decide that it would further aid me, this organisation, the shop, in acting in accordance with the doctrines and tenants of the religion to only serve

people of that religion then 22M says I can do that. We do not think that is the way a religious discrimination law should operate, to allow organisations running, for example, a commercial business to exclude people of one faith. We think that is not what the religious discrimination Act should set out to do. Whether or not people will do that, there may be examples, I do not have them off the top of my head. My point is, it could happen and for Parliament in passing a law it should turn its mind to what could happen because we should not have laws that are open to be misused.

**Ms ROBYN PRESTON:** I hear what you are saying, but I am drilling down further to your comments and you said that basic services, not just the lack of wanting to serve someone in a shop, basic services you are saying, things that would be there for survival and important day-to-day operations and services, you say you feel that would be denied if this bill got up?

**Mr HUNYOR:** It could be. I would consider groceries to be a basic service and they could be denied to someone on the basis of their religion in the sort of circumstances I have outlined, which I do not think is fanciful.

**Ms ROBYN PRESTON:** That being the case, is there an opportunity to make an amendment to the bill, but still support the essence of the bill?

**Mr HUNYOR:** Yes, I think there is. I think there is quite a lot in it. I think the PIAC submission seeks to identify those things that would need to be changed, as does the Discrimination Law Experts Group, to identify the way that can be done. We support that. We want to see religion included as a protected ground, but we do not think this gets it right.

**Dr LYNCH:** I agree with all of those comments. I think it is very important. We cannot know from experience what the impact will be because we do not have an example of it because there is not any such provision operating currently. But, if those protections were put in I would go further and say it would be likely that some organisations would utilise that protection that they have in acting in a way that would otherwise be unlawful. In fact, it would probably be extraordinary if some organisations did not do that in some services. The nitty-gritty is the one that Mr Hunyor has raised, do we want to have the Act giving that kind of protection to religious organisations? A kind of protection that is not available to any organisations vis-a-vis the other attributes.

**Ms ROBYN PRESTON:** For me it is a real juxtaposition that you are a religious group and you would deny someone basic services of food to be able to survive.

**The Hon. GREG DONNELLY:** It is called scare tactics.

**Ms ROBYN PRESTON:** You said the definition of religious activities in 22K lacks clarity and should be amended to "engaging in" or "not engaging in" or "refusing to engage in a lawful religious activity", would you like to elaborate on that?

**Dr LYNCH:** Which submission are you reading from?

**Ms ROBYN PRESTON:** This is 22K, the Public Interest Advocacy Centre.

**Mr HUNYOR:** The concerns that we have around 22K and the definition of religious activities, is that what you are talking about?

**Ms ROBYN PRESTON:** Yes, it says, "definition of religious activities lacks clarity and should be amended". You are suggesting, "engaging in" or "not engaging in" or "refusing to engage in a lawful religious activity".

**Mr HUNYOR:** Yes. I think the point we make is that would be a simpler formulation. One of the concerns we have is that it includes acts motivated by a religious belief and religious belief is something that is very broad. We have these sorts of cumulative uncertainties around how things are defined. There is a great subjective nature in how some of the definitions work and we think that if it can be simplified, it would be easier to understand and easier to apply.

**Ms ROBYN PRESTON:** If you would like to make a comment I am happy to hear from you, Professor Rice?

**Professor RICE:** I am not sure whether Mr Donnelly's comment was on the record or not?

**The Hon. GREG DONNELLY:** I hope it is.

**Professor RICE:** So the comment this is scare tactics, I was going to say Ms Preston, that I think it is unremarkable that in drafting legislation part of the exercise is to anticipate the future, that is why we do it. Within reasonable bounds, Parliament all the time is trying to anticipate future conduct that it either wants to create

remedies for, or to dictate—that is the nature of legislation. So yes, we do sit down and have a rational discussion about what might be possible and we have examples—

**Ms ROBYN PRESTON:** But it is an assumption rather than a fact and there is no data to back up the assumption.

**Professor RICE:** As I say the art of drafting legislation is to, no it has got to be more than an assumption, but to reasonably anticipate what might happen because otherwise, with respect, the laws that you pass are not going to engage unless you have reasonably well anticipated how they might work.

**Ms ROBYN PRESTON:** But oftentimes, if I can add to that we are changing laws because of—

**The CHAIR:** Ms Preston, we need to move to Ms Cusack shortly for her time.

**The Hon. CATHERINE CUSACK:** Thank you very much. Just a change of pace. The proponents of the bill are arguing freedom of speech but is it not perverse to use an anti-discrimination bill to permit discrimination?

**Professor RICE:** That is one way of putting my technical submission that this is the wrong place to have this discussion. There is a necessary discussion to be had about religious freedom but as the Ruddock review said, there are discrimination measures, which this is, and there are freedom measures, which warrant a different discussion. This bill as drafted goes beyond protecting religion. It allows religion to be used against others and for that reason it is a different discussion that does not belong in this act, I agree.

**The CHAIR:** Ms Cusack?

**The Hon. CATHERINE CUSACK:** Thank you, that was my question.

**Mr JIHAD DIB:** Good afternoon everyone. I have just got a couple of questions so hopefully we will get through them in the five minutes. The first is for Mr Hunyor, just a bit of a clarification. Your submission, the PIAC submission, says:

Religious education authorities should be prohibited from discriminating against students on the basis of religious belief after the point of admission.

**Mr HUNYOR:** Yes.

**Mr JIHAD DIB:** Just to clarify that, are you saying that if a student is in a school they cannot be discriminated against once they are in the school?

**Mr HUNYOR:** That is right.

**Mr JIHAD DIB:** Does the same thing apply in terms of when it comes to the point of admission? Or are you saying that at the point of admission—so the point of enrolment—schools of a particular religious faith can still make that choice as to who they will unroll and who they will not enrol?

**Mr HUNYOR:** That is right. I appreciate this is an issue where people will draw the line differently. PIAC is seeking to recognise that religious organisations will want to—and people of faith will want to—be able to have children in religious schools and that means having them discriminate at the point of admission on the basis of religion. So admitting only students who are Christian students, or whose parents adhere to that faith—so at the point of admission. Once a child is admitted to the school, we say they should not then be treated less favourably because, for example, they start to question their faith, particularly when we have kids being enrolled in primary school, they really do not know what they believe.

They may have been at that school for many years. They now start to question their faith. They may change their faith. They may no longer agree and they should not then be able to be expelled or treated less favourably. That is where we try to balance those competing demands.

**Mr JIHAD DIB:** Obviously there are a lot of kids enrolled in schools across the State of a different faith in a particular faith school. I know a lot of kids of the Islamic faith who might go to Catholic schools. I know of an Islamic teacher who works in an Anglican school and vice versa. That is a choice that the school makes but also the parent and the child when they enrol, they know that that is the ethos around it. I just wanted to clarify that at that point it is basically a choice that can be made but once they go in, they cannot be discriminated against.

**Mr HUNYOR:** That is right.

**Mr JIHAD DIB:** I think that is fair enough. The second is more of a question of where we are at and this would go to Professor Rice. You mentioned earlier the individual discrimination as opposed to that based upon faith and so forth. I use this as an example of things that have come to my attention in my role, where does that place a woman who wears a headscarf as part of her religious belief, who walking down the street is either

called a whole heap of things based on that faith or—in a worst case scenario—actually has somebody attempt to remove the item of clothing, the headscarf? Where does that fit in in terms of current law and how would that work within this particular legislation that is proposed?

**Professor RICE:** So we put aside criminal law, which—

**Mr JIHAD DIB:** As far as I know, the criminal law covers someone attempting the assault by taking a headscarf off but—

**Professor RICE:** Yes. That is what I am saying. You want to know about in this regime?

**Mr JIHAD DIB:** But more so the issue of the person who is walking down the street, who gets called a so-and-so.

**Professor RICE:** That would be an example of the vilification protection that we have advocated for straightaway.

**Mr JIHAD DIB:** It does not exist at the moment. That is the issue.

**Professor RICE:** No, it does not exist at the moment. That is exactly right. That is why we are saying we would like to see an act with that in it. We are all here in favour of religious discrimination protection and, in our submission, that extends to religious vilification protection. The example you give is exactly that. Just briefly, on your question about schools the Committee would be aware, religious discrimination protections already exist in other jurisdictions. The example that Mr Hunyor gave you is effectively quoting from the Victorian act, for example. That is how it works.

**Mr JIHAD DIB:** Thank you.

**The CHAIR:** We now move to Mr Donnelly.

**The Hon. GREG DONNELLY:** In light of the time, could I vest my five minutes to Mr Latham to finish on a couple of technical questions about the legislation?

**The CHAIR:** I am sorry.

**The Hon. GREG DONNELLY:** I am wondering if you would agree that I could vest my time with Mr Latham to deal with a couple of technical questions to do with the Act?

**The CHAIR:** You are going to share the five minutes between you?

**The Hon. GREG DONNELLY:** No, I am vesting the five minutes to him.

**The CHAIR:** You are gifting it. Okay, Mr Latham.

**The Hon. GREG DONNELLY:** Thank you very much.

**The Hon. MARK LATHAM:** Thank you to the Hon. Greg Donnelly for the gift of his five minutes. Professor Rice, the primary authors of the submission were Liam Elphick and Alice Taylor. Were they unable to give evidence today?

**Professor RICE:** Correct. Quarantine restrictions. One is in Queensland and one is in Victoria. They would very much like to have been here but it was not possible.

**The Hon. MARK LATHAM:** I notice that Mr Elphick in his commentary about the bill, submitted on social media, expressed the view that the bill was based on the Christian Porter bill in Canberra. Do you accept now that is just fundamentally untrue?

**Professor RICE:** I do not know what has happened to lead me to do that? I look at what you call the Christian Porter bill, at the Federal legislation, this legislation and I see similarities. I do not know. I cannot say more than that.

**The Hon. MARK LATHAM:** I can give you an assurance it was not. I do not think that unfounded speculation adds to the credibility of your law group of so-called experts if you are just making things up—if I can just make that point. Related to that—

**Ms JENNY LEONG:** Point of order: Mr Elphick is not appearing. I am sure that if Mr Latham wants to put questions to Mr Elphick about a tweet or something that he wrote on social media and request a response, that would be reasonable. But to attempt to discredit the expertise of the anti-discrimination law experts group on the basis of one tweet that Mr Latham claims he has read or one bit of a social media posting by one of the members of that committee that is not included in the submission is really, I think, going a little too far.

**The CHAIR:** I note your objection. Mr Latham, please continue, respectfully.

**The Hon. MARK LATHAM:** In relation to that, Mr Rice, you entertained earlier on the assertion by the Hon. Catherine Cusack about freedom of speech provisions in this bill. Do you recognise that none of the freedom of speech provisions in the Porter bill are reflected here? I can assure you, as the author of the bill, we have gone out of our way to avoid the insertion of freedom of speech provisions on the Canberra model in this legislation.

**Professor RICE:** Two things, Mr Latham: I do not remember her saying freedom of speech.

**The Hon. MARK LATHAM:** Can you point to those provisions?

**Professor RICE:** I do not have any view about the Porter bill at all. I have not expressed one. I do not have one. I do not really know what you are referring to, so I am sorry I cannot comment on the Porter bill.

**The Hon. MARK LATHAM:** No, well, just a moment ago you entertained the question from the Hon. Catherine Cusack about the freedom of speech provisions in this bill. Can you point to where they are?

**Professor RICE:** I understood her to say freedom provisions. I do not recall her saying freedom of speech.

**The Hon. MARK LATHAM:** No. My question to you was freedom of speech.

**Professor RICE:** Maybe *Hansard* can clarify that?

**The Hon. MARK LATHAM:** No. The question to you was freedom of speech—freedom of speech.

**Professor RICE:** Well, I took the question that she posed as referring to freedoms and that is how I answered it.

**The Hon. MARK LATHAM:** Okay. But you recognise that there are no freedom of speech provisions—

**The Hon. CATHERINE CUSACK:** Can I just clarify: I actually said that proponents of the bill would argue the freedom of speech. I did not say that the bill has freedom of speech.

**The Hon. MARK LATHAM:** Well, I am the proponent of the bill and I have never argued that. I expressly said—

**Ms JENNY LEONG:** There are other proponents of the bill.

**The CHAIR:** Please, can we have one—

**The Hon. CATHERINE CUSACK:** I just wanted to clarify what the question was.

**The CHAIR:** Excuse me. Just one person speaking at a time.

**The Hon. MARK LATHAM:** Well, I am the proponent of the bill.

**The CHAIR:** If I could hear from the Hon. Catherine Cusack briefly, because she has been brought into this questioning?

**The Hon. CATHERINE CUSACK:** Thank you. I just wanted to clarify that I said proponents of the bill would argue freedom of speech. That is just to clarify what my question was.

**The CHAIR:** Thank you, Ms Cusack. Mr Latham?

**The Hon. MARK LATHAM:** Well, I am the proponent of the bill and in my second reading speech I said:

I can ... assure the House [the Legislative Council] that my bill learns from the problems Christian Porter has encountered on the question of freedom of religious speech. I have drafted no such provisions.

**Professor RICE:** I have no view on that, Mr Latham.

**The Hon. MARK LATHAM:** You have no view now.

**Professor RICE:** It is not a view that I have expressed.

**The Hon. MARK LATHAM:** You entertained the earlier question—

**Professor RICE:** I did.

**The Hon. MARK LATHAM:** —but now you have no view.

**Professor RICE:** No. I entertained the earlier question about whether or not this bill was—I took it and you heard my answer—whether reference to freedom is appropriate in an anti-discrimination Act and you heard me say, as a drafting matter, I do not think it is. I do not know about the references you have made to Mr Porter's bill.

**The Hon. MARK LATHAM:** You did not read the second reading speech as part of your research?

**Professor RICE:** Your second reading speech?

**The Hon. MARK LATHAM:** Yes.

**Professor RICE:** Yes, I did.

**The Hon. MARK LATHAM:** You did. And you noticed that clause? That there are no religious freedom of speech provisions here?

**Professor RICE:** Yes.

**The Hon. MARK LATHAM:** And I have expressly avoided them?

**Professor RICE:** Yes, and I have not commented on that.

**The Hon. MARK LATHAM:** It is pretty slippery, is it not? Disgraceful.

**The CHAIR:** Mr Latham, do you have another question?

**The Hon. MARK LATHAM:** Disgraceful.

**Professor RICE:** I am sorry—

**Ms JENNY LEONG:** Chair! Point of order—

**Professor RICE:** Madam Chair, I think my conduct has just been identified as disgraceful.

**The Hon. MARK LATHAM:** Yes. My word it has.

**The CHAIR:** Excuse me—

**The Hon. MARK LATHAM:** You are on oath here.

**The CHAIR:** Excuse me, Professor Rice and Mr Latham.

**Professor RICE:** Madam Chair, may I—

**The CHAIR:** With respect, this is to be, and it is my concern, that this is a respectful forum.

**Professor RICE:** That is my point, Madam Chair.

**The CHAIR:** Okay. I want the witnesses to feel comfortable. We may disagree with their views, but we do want to hear what they have to say. We have one more minute that has been allocated to Mr Latham. Mr Latham, is there a further question you would like to ask Professor Rice?

**The Hon. MARK LATHAM:** Oh, yes—to Mr Hunyor about the proposition that someone on a work computer sending a message out to everyone at work somehow does not qualify as work. Are you really expecting us to swallow that?

**Mr HUNYOR:** Well, I am just trying to address the terms of the legislation, the draft legislation. If you go to 22N (4) it states:

*protected activity* means—

(a) a religious activity performed by the employee that:

(i) occurs at a time other than when the employee is performing work—

Midnight—

and at a place other than the employer's place of work—

Home. So, yes, I am saying that if you email from your work computer at midnight all of your fellow employees, that my reading of 22N (4) is that that is protected activity. If that is not the intention, then it would be good to fix it up because otherwise that is my concern. I could be wrong but I am just doing my best to understand how this would work.

**The Hon. MARK LATHAM:** Your proposition is, in the digital age—

**Ms JENNY LEONG:** Sorry, Chair. I believe that Mr Latham's time has expired.

**The Hon. MARK LATHAM:** —when people have got a work computer and they are on it, emailing to everyone at work, that is not really work.

**Mr HUNYOR:** No, no. I am talking about what the law says, or the bill says. It says:

occurs at a time other than when the employee is performing work and at a place other than the employer's place of work,

If you want to seek to include things that are in the course of business, for example, or use another formulation, that would be good. That would fix the problem but it is a problem with the drafting. And if that is not the intention, then it should, with respect, be fixed.

**The CHAIR:** Okay. Now we have 10 minutes of questions from members who would like to ask additional questions. Ms Leong?

**Ms JENNY LEONG:** Thank you, Chair. I want to ask whether or not it is your view that the protection provided to religious organisations in the bill with respect to discrimination protections would allow discrimination actions either against the New South Wales Government or a New South Wales Government department or an officer if there were criteria? I use this example: We, as local members, are required to grade criteria for community building partnerships on the upgrade of community not-for-profit infrastructure on the basis of it improving access for all in the community.

Obviously, if some organisations did not want to allow their newly upgraded air-conditioned hall to be used by certain people, and that was known, then obviously they would not score so highly on that access for all. I wonder under this provision—we have heard from others—that perhaps it gives rights to organisations rather than to individuals. I wonder if you believe that there are complexities that need to be looked at in relation to whether or not that would mean officers of the New South Wales Government or a specific department would be subject to actions by, say, for example, the Catholic Church or another church group if they were unable meet that criterion and identify that as a form of discrimination.

**The Hon. GREG DONNELLY:** You've got to watch those Catholics!

**Ms JENNY LEONG:** Chair, I do not appreciate Mr Donnelly's commentary on my questions.

**The CHAIR:** Excuse me, Mr Donnelly. Ms Leong, if you could continue your line of questioning, please?

**Professor RICE:** Ms Leong, it is conceptually pretty difficult. I think there are two parts to your question. Yes, under the proposed 22Z the State of New South Wales will, through its laws and programs, be amenable to the Act and complaints would be able to be made. That provision exists in other legislation—existing Federal legislation. It does not exist in the New South Wales Act. One of our submissions is that it is not a bad thing to have that provision but it should apply to all attributes. It would be very odd that the State could be exposed to discrimination complaints on only one attribute and not others. But I think you are also asking about—you are referring to individuals and organisations so at the other end you are asking about who could make a complaint. Is that right?

**Ms JENNY LEONG:** Yes, correct.

**Professor RICE:** So at the moment "person" is not defined. At law a person can be an entity and that could be problematic. Entities do not usually have the attributes that we are talking about. So an entity does not have a race or a sex or disability but, as the bill shows, it could have a religious character. So at the moment, as drafted, yes it does give standing to entities to complain of discrimination.

**Ms JENNY LEONG:** Thank you. Mr Hunyor, do you want to add to that?

**Mr HUNYOR:** No, I do not think I do. We are of a similar mind to the Discrimination Law Experts Group on that. We think that organisations should not be able to bring complaints in their own right so, as opposed to on behalf of an individual who may have had their rights breached. We do not think that organisation should have, effectively, human rights as ascribed it to them.

**Ms JENNY LEONG:** And this is just a simple question to clarify because we have been around this a little bit; it is just to clarify that there is support from all of you—just to get an indication if there is support from all of you—to have a discrimination on the grounds of religious belief being included in the Anti-Discrimination Act in the same way that other protected attributes are grounds that are currently referred to?

**Professor RICE:** Yes, that is right.

**Mr HUNYOR:** Yes. That is our starting point.

**Ms JENNY LEONG:** Thank you.

**The CHAIR:** Mr Greenwich?

**Mr ALEX GREENWICH:** Thank you, Madam Chair. If I could this: Are all of you, if you are willing, able to talk to the way in which the bill could potentially allow for religious activities which would be unlawful or potentially prohibited by a public health order to occur?

**Professor RICE:** Legal advice on the run.

**Ms JENNY LEONG:** You can take it on notice.

**Mr HUNYOR:** We will take it on notice. I would appreciate the chance to think it through.

**Professor RICE:** Yes. It is complicated because it depends on who the actor or the duty bearer is and who you would identify as being responsible, and then whether the Act's terms extend to cover that decision. I can see that it is a question that arises.

**Mr ALEX GREENWICH:** Also in terms of the way in which this should be dealt with. Again, this is a quick question similar to what Ms Leong had asked. Would you all support a full and thorough independent expert review of the Anti-Discrimination Act 1977 as the means for modernising it?

**Dr LYNCH:** Yes.

**Professor RICE:** Independently of this issue, then yes. That is our submission.

**Mr HUNYOR:** The point we make in our submission is that the legislation is now 43 years old. The majority of the recommendations from the 1999 Law Reform Commission review of the Act have not been implemented. It is full of inconsistencies and gaps. Some of the language is outdated. Some of the attributes are covered differently. The ADA was once a leader in anti-discrimination law and now it is really a laggard so we think there is a compelling case. This debate really highlights it. There should be uniformity. There should be equality protection and we think that now is a good opportunity to do that.

**Dr LYNCH:** Civil Liberties certainly supports that. We put our recommendations forward in a graduated way, picking up on the point that someone made earlier that if you are calling for a full review of the Act, how long is that going to take? Well, it should not really take all that long, given that there are other recent Acts around. One, it would be perverse to progress this bill before we have the from the Australian Law Reform Commission's review of exceptions, which surely will directly impact on some of the resolutions in here. Then we said that it would be highly desirable—and we do not necessarily have to wait—that we have a review of the full Act for the reasons that Mr Hunyor has flagged. Lots of people would agree with that.

We have also said that all of this would be a lot clearer, and a lot of these debates would get sorted within a better and more understandable framework, if we had a human rights charter including religious rights in place in which to frame it. It does seem to me to be a bit crazy for us, in terms of rationality and coherence, not really to try to link in with what is happening with the national bill. Of course, it is going to be a very weird scenario if there are very significantly divergent approaches. So we have had a bite at each bit, because we want the concerns that we have with the bill to be picked up.

To go back to an earlier comment, I think a bit like the Commonwealth bill, it could have been fixed pretty easily because the guts of a good anti-discrimination bill was in it. It was all of those extensions which greatly—and Mr Latham may well have kept well away from them, but there are many aspects in this bill which are very similar to the Commonwealth bill. Again, in this bill it would be pretty easy to lop them off and you would still have a decent religious discrimination set of provisions in place without the debates, the hassles and, I would argue, the disharmony and the conflict or whatever which seems to be highly probable if this Act went through exactly as it is. It is not just that it is privileging religious discrimination and religious rights over others, some of the protected activities and the context mean that a hell of a lot of people can potentially be harmed by it. It makes it lawful to potentially harm people by discriminating against them in ways which are currently unlawful.

**The CHAIR:** Thank you very much, Professor Rice, Dr Lesley Lynch and Mr Jonathon Hunyor for attending the Committee hearings today and for taking those questions in good nature. You can see that we all have inquiring minds about what this bill will mean. I thank you for participating in this process, and I wish you well. Thank you also for your submissions towards the process.

**Dr LYNCH:** Would it be possible to clarify one thing? The earlier discussion about the Department of Justice was not a submission, it was a paper, I gather.

**Ms JENNY LEONG:** The briefing.



**The CHAIR:** It was a briefing to Committee members. It is not a public briefing.

**Dr LYNCH:** I would be extremely—I find it incomprehensible to think that that conclusion could have been reached. I would really like to read—if there is any access to the content of that briefing, we would really like to have a look at it and put in a supplementary statement.

**The CHAIR:** I think that the best way for us to proceed rather than continue this hearing, because it is now closed, is that we deal with that as a committee. We will be meeting briefly ahead of the next panel and we will consider the matter that you have raised. Thank you.

**Dr LYNCH:** Thank you.

**(The witnesses withdrew.)**

**(Short adjournment)**

**The CHAIR:** Good afternoon again, members of the Committee. Before we bring the witnesses in we will deal with a matter of business that we dealt with before our short break. That is for someone to move a motion for me to give a statement that reflects the resolution that we passed in our deliberative about 10 minutes ago. I will read that statement, which gives some form to that resolution that we made. I would like to advise that in the beginning of evidence from our third panel of witnesses today, a question put to a witness disclosed the name of a submission-maker. The Committee had not authorised the publication of that submission-maker's name.

The Committee has now resolved that the name be redacted from the transcript of evidence, that the media not report on the comments made and for members of the public not to repeat them. Any act in contravention of the Committee's resolution may not be covered by parliamentary privilege, may constitute an unauthorised disclosure and therefore represent a potential contempt of Parliament.

**The Hon. GREG DONNELLY:** Move that way, Chair.

**The CHAIR:** Good afternoon. I welcome our fifth panel of witnesses. You will not be able to see all the members of the Committee. I will call their name out when they ask you questions. We will do the best we can to have them identified. If you cannot see them, you will definitely hear them. We are well miked up, so you will hear the audio very well. I thank you for making the time to join us today.

**CHRISTOPHER BROHIER**, Legal Counsel, Australian Christian Lobby, before the Committee via videoconference, sworn and examined

**JOHN STEENHOF**, Principal Lawyer, Human Rights Law Alliance, before the Committee via videoconference, sworn and examined

**MARK SNEDDON**, Executive Director, Institute for Civil Society, before the Committee via videoconference, sworn and examined

**The CHAIR:** Before you take your oath or affirmation, I want to outline how we will run the next 45 minutes. We have a large committee, and the way that it will run smoothly for us—and hopefully for you—will be that we will not have any opening statements. Each member will get approximately five minutes to address a question to you. There will be a little bell that goes off here so that we can give a bit of warning when we are close to that. We will not cut you off precipitously. You will be able to finish your sentences and your thought. Some members may decide that they do not want to pursue questions in their allotted time, so we add that back to the time at the end when members have a chance to ask another question, if they so wish. Are there any questions about how that will run for you?

**Mr STEENHOF:** No.

**Mr BROHIER:** No.

**Mr SNEDDON:** No.

**The CHAIR:** Thank you, gentlemen. We will jump straight into questions, starting with the Hon. Scott Farlow.

**The Hon. SCOTT FARLOW:** Following on from this morning, we heard from Uniting Church, who outlined that they believed that the bill preferences Christian faiths rather than other faiths. Is that something that you see as being true with the bill? I open that up to all witnesses.

**Mr SNEDDON:** Thank you for your question. No, I do not think the bill does that at all. It is very neutral in its description of religious belief as being any form of religious belief that would go to the common law definition which, in Australia, is based on *The Church of the New Faith v Commissioner of Pay-Roll Tax*. But it also includes not having a religious belief. I think that in the second reading speech or notes there is a reference to the discrimination suffered by Islamic people and Jewish people, as well as Christian people. I cannot see any basis for the assertion that the bill favours Christian people. In its terms it certainly does not.

**Mr BROHIER:** Further to that, clause 3 of the bill has regard to the International Covenant on Civil and Political Rights, the UN Declaration on the Elimination of All Forms of Intolerance and the Siracusa Principles. It requires a court or tribunal to interpret the requirement of the amendment in accordance with the international instruments. Those instruments expressly deal with all religions and not just one religion, so that proposition cannot be right in my respected submission.

**Mr STEENHOF:** The bill draws its definition of what constitutes a religious belief or religious activity from the seminal Australian circuit court *The Church of the New Faith* case. The religion that was under scrutiny in that case was not even a Christian religion, it was Scientology. The definition itself has been taken from a case where the purview is wider than just religion, so I do not see any basis for saying that the bill preferences Christianity over other religions. In fact, quite the opposite: it is neutral.

**The Hon. SCOTT FARLOW:** Mr Sneddon, I want to put a question to you that arises out of your submission, but I also ask you to make a comment with respect to comments by Reverend Hansford this morning. He said, "Christians are not victims because of our faith and we should not seek freedoms that are self-serving and come at the detriment of others in our community." Your submission raises issue with respect to religious discrimination, and I note you make a few examples of discrimination of people of Christian faith in Australia. Would you like to comment on the level of discrimination for those practising the Christian faith?

**Mr SNEDDON:** Thank you, Mr Farlow, I am happy to do that. Mr Steenhof may also wish to. There is certainly an increasing number of examples of people of, I would not necessarily even say Christian faith but traditional values about the nature of a person, the nature of a family, the nature of marriage—and they would be shared across traditional Muslim, Jewish and Christian religions—that have come under attack. Well, have become more contested in this society in recent times. That would not be news to anyone on the Committee that that is the case. That contestation is reasonable enough in a democratic society, and we have voted to change our definition of marriage. But that means that there is more contention around those sorts of issues, so that the people who have held to the former definition of marriage, for instance, now find themselves out of step with the legal

position and in a numerical minority. As with any minority, therefore, they are more likely to suffer discrimination from people on the other side.

To that point, I think there is more discrimination and there are plenty of examples of university students and practitioners—again, Mr Steenhof can give you chapter and verse on this—as well as professionals and workers, who have been sacked or suspended from their courses because they have expressed a traditional religious view in respect of those subjects, whether it be Christian, Muslim or Jewish. So, yes, I think it is a real issue. As to the point made by the moderator of Uniting Church earlier, what is being put here is a freedom. You do not have to complain about being discriminated against if you do not want to and, therefore, if Uniting Church people want to follow the example of Jesus Christ in some instances and turn the other cheek, then they are perfectly able to do that, as is any Christian. But, in certain cases, there is a justice issue that should be addressed. For example, the student who is bumped out of their course at the university because they said something that was not in accordance with what the equality officer thought was right.

This is providing a series of rights which are on all fours with the rights that are available to people who should not be subject to discrimination on the grounds of gender, race, disability or homosexuality. It is the missing piece, which is what the Ruddock committee said: this is the missing piece in New South Wales, South Australia and federally and why the missing piece should be inserted into the Anti-Discrimination Act.

**The Hon. MARK LATHAM:** Thank you to the witnesses for their submissions. One of the points we have heard at the hearing today goes to the inclusion under the principles of the Act of the International Covenant on Civil and Political Rights, particularly the mention of article 18.3. Is this something that is unnecessary in the drafting of the bill or is it integral to the fact that, especially off the Cobaw case in Victoria, it's clear—and, I suppose common sense will tell you is clear—you need some conflict resolution mechanism? Because one of the things about protected attributes, or what you might describe as identity politics, is that sometimes identities collide. Inclusion of religious protections against discrimination in the bill most obviously can collide with LGBTQI+ rights, most noticeably as they did in the Cobaw case. We need a dispute resolution mechanism, do we not—and that is primarily the reason that the covenant comes in?

**Mr BROHIER:** I think that is right. I think the fundamental issue where a lot of Australian anti-discrimination law has gone wrong is that article 26, which is the non-discrimination article in the ICCPR, has been widely legislated and litigated. But article 26 states that the law shall prohibit:

... discrimination on any ground such as race, colour, sex, language, religion, political or other opinion ...

And we have left out religion. Then, on top of that, article 26 sits in the ICCPR, which has a number of rights and one of those is article 18. It must not be a hierarchy of rights; it is this quilting of rights. If you do not have article 18 legislated, you create a hierarchy of rights that is not the principle of the ICCPR.

**The Hon. MARK LATHAM:** Are there other international conventions that could be brought in to the main body of the Act if the Parliament was to adopt this particular bill? Are there any other conventions that are integral to the overall Act functioning in the right way as a matter of anti-discrimination law?

**Mr BROHIER:** I noted that the Australian Discrimination Law Experts Group wants lots and lots of others brought in. But in my respectful submission the ICCPR and the Universal Declaration of Human Rights are the fundamental great human rights charters. If we have the ICCPR, that is sufficient.

**The Hon. MARK LATHAM:** Thank you. And would there be anything stopping members of Parliament or indeed the Attorney General if they wanted to provide international convention coverage for other attributes covered in the Anti-Discrimination Act such as sex discrimination, gay rights, transgender and so forth, to write in as part of that process relevant conventions?

**Mr BROHIER:** No.

**The Hon. MARK LATHAM:** To Mr Sneddon could I ask about another point that has been made consistently at the hearing: Is it possible for this bill as proposed to override public health orders? Expressed and delivered in New South Wales, I suppose, this particularly goes to the COVID environment.

**Mr SNEDDON:** It depends what you mean by "override" but I think the general answer would be no. There is a general exception at the back of the Anti-Discrimination Act which says that the Act will not apply to any action which is required by or under statute including regulations and subordinate legislation. So I am assuming your Chief Health Officer's directions are made under your Public Health Act and have the force of subordinate legislation so whatever is done in accordance with those directions is exempt from discrimination scrutiny by virtue of the provisions of the Anti-Discrimination Act.

**The Hon. MARK LATHAM:** Thank you very much. Any remaining time I would cede to my colleague Dr McGirr—45 seconds, a generous donation indeed.

**The CHAIR:** It is good it is a Friday afternoon. Thank you for your generosity. Dr McGirr, you have 45 seconds including the witness answering.

**The Hon. MARK LATHAM:** Or as part of his time later on, can we take that on?

**The CHAIR:** Ms Leong is next up so we will take it that way, if you are agreeable.

**Ms JENNY LEONG:** Mr McGirr, if you want to take the 45 seconds and your session now, I am very happy to go that way just so the Committee does not have to remember.

**Dr JOE McGIRR:** Okay. Thank you, Ms Leong. I will just refer to a couple of points. In relation to the submission from the Human Rights Law Alliance, Mr Steenhof, you have made a reference in your submission to the fact that this proposed bill integrates well with the Anti-Discrimination Act. We have heard evidence today from other groups who have contended that this actually tears apart, in some way—I think that was the phrase used—the Anti-Discrimination Act, from what I could tell, partly in relation to the inclusion of the references to international instruments but also in terms of operation of the Act and, from what I can gather, the fact that the current Act is quite old. However, and there may be a comment from the other members of this panel on this, it seems that you think it integrates well with the Act. I would like to hear your views on that, please.

**Mr STEENHOF:** Thank you, Committee member. The approach taken in this Anti-Discrimination Act is different than that taken in many other jurisdictions. We run cases under these Acts in various States and Territories throughout Australia. The New South Wales Anti-Discrimination Act is very similar to the Western Australian one in that each attribute is given separate provisions which protect it and that allows for some nuance to be given as between particular attributes of the rights in question. I think this particular addition integrates well into the bill because in terms of the vanilla anti-discrimination provisions, it follows the same general form as the protections for the rest of the rights, the other protected attributes which have had protection for some time. So in that respect it brings religious freedom up into a parity with long-established other protected attributes.

In terms of the complaint about the inclusion of international covenants I would just say that that is a direct recommendation of the Ruddock review. That was a review that looked at over 15,000 submissions. That was a review that was chaired by a very good committee and made those recommendations. I do not think that they derogate at all from other rights. In fact, in the case of the inclusion of the ICCPR, that is not just a document protecting religious rights but all rights and freedoms. One of the things that has been particularly missing from the rights discussion in Australia has been that the sole focus has been on discrimination. For 40 years the only rights that have really been legislated and litigated are anti-discrimination rights. This is now starting to give better effect to the international law, which puts all rights at a parity.

**Dr JOE McGIRR:** Okay. Thank you.

**Mr SNEDDON:** Could I add to that?

**Dr JOE McGIRR:** Sure.

**Mr SNEDDON:** I think in terms of the inclusion of a reference to the ICCPR and the Siracusa Principles in clause 3 is a very helpful initiative, for the reasons that Mr Steenhof and Mr Brohier have said—that this, like every anti-discrimination Act, is an implementation of the article 26 ICCPR right not to discriminate against people on certain grounds. But it sits within the context of a whole convention on rights including and to be balanced with and take its co-equal place with other rights like the right to freedom of association in article 22, freedom of expression in article 19, freedom of religion in articles 18 and 27, and that needs to be recognised.

It is sort of implicitly recognised in the exceptions that pop up here and there in anti-discrimination. It is because some of them take some account of those other rights. But this Bill is putting a framework in place, saying this is one right among many. It needs to be a Parliament enacting it is serious about this right but it needs to be put in place. And when you are putting the religion right in, in particular, you get more conflicts for the reason I mentioned before and so something like the Siracusa Principles, which is an internationally accepted international benchmark system for balancing competing rights claims, is a very useful guidance to put in this Act to help that balancing of what will inevitably be competing claims. I fully support the references that have gone in in clause 3.

**Mr BROHIER:** If I could just add to that as well, member, the criticism generally seems to misunderstand that this Act does not give a right to discriminate. It is a shield. It brings in protection for a new attribute, religion. There seems to be a lot of angst about section 22M but that has got to be understood in the context of once you bring in a protection for religious discrimination you have to do something to avoid sectarian conflicts. For example, if a Shiite cleric wants to take a position in a Sunni school then you have got to be able to resolve that so the Sunni adherents can say, "Well, we don't want the Shia running our school." So you have to have some mechanism and section 22M has a fair crack at that.

**Dr JOE McGIRR:** Just on the question of section 22M, I just noticed that the Institute for Civil Society has made reference to a possible need to make a change there. I wonder if you could comment on that, Mr Sneddon.

**Mr SNEDDON:** Do you want me to just repeat that suggestion I have made there about 22M?

**Dr JOE McGIRR:** Yes. I think you have made a suggestion about avoiding discrimination by religious organisations. It is an issue that has come up today in evidence so I think it would be worth you going over that matter.

**Mr SNEDDON:** Sure. So 22M provides protection for religious ethos organisations, which is a broader category than religious bodies to propagate a religion in the existing exception in section 56 which this bill does not deal with, does not touch. It provides that religious ethos organisations do not engage in discrimination when they do certain things which are in conformity with their doctrines or necessary to protect the susceptibilities of individuals. I am paraphrasing. I am not speaking very well. That could apply to employment of people, to membership of the organisation and to the activities of the organisation such as the supply of services. In our submission we tried to rebut, I think, the ill-founded criticisms of protection for employment for such organisations by saying that most organisations employ people who will be ambassadors for the cause and be on board with the values and mission of the organisation if it is an organisation which is trying to propagate a particular set of values.

So we have discussed that already. When we come to membership it is the same thing. It would be ludicrous to say that the local mosque must admit Jews or Scientologists and so on who do not believe in Islam. It just makes sense, as Mr Brohier said. When it comes to the supply of goods or services, I think there is probably scope for the Bill to be a bit more nuanced. If it is a halal shop then perhaps they can discriminate as to customers. But my point is that I think in Australia it probably does not pass the pub test as a general proposition to say that a religious ethos organisation which advertises and holds itself out as supplying goods or services to the public in a commercial context, without warning anyone in advance, say to people that they are not [audio malfunction].<sup>1</sup> I think to the extent that section 22M might go that far, it needs to be wound back a bit.

Perhaps it could be wound back to the point of saying, "Well, if you are going to do that in a commercial sale in the public context, you need to be very explicit upfront that you are going to have those sorts of restrictions". The types of contexts in which objections have been raised to this include the provision of welfare services and that groups might turn away unmarried women. In my experience of welfare services, they are set up exactly for unmarried women. A lot of people they are going to be turning away are the people who are most welcome to come. I think some of those other examples about discrimination in the provision of welfare services are fanciful, but in the context of commercial provision, yes, we have suggested a tweak to 22M.

**Ms JENNY LEONG:** I would like to ask for your opinion on evidence we heard earlier today about a Christian teacher who was employed at a religious school. It was a case given to us obviously. It was a personal case, so the names were not mentioned. She had been working at that religious school for a number of years and then announced her engagement in a same-sex relationship and then was fired from that school. Do you believe this bill provides protections for that action to be taken and do you support that action to be able to be taken? Just to clarify, at least from the case as given there were no concerns about the teacher's performance or a commitment to Christian values. It was as a result of her engagement to someone of the same sex.

**The Hon. GREG DONNELLY:** Point of order: Just so the witnesses are clear, what Ms Leong has done is repeat what was explained earlier today with respect to the circumstances. We have not seen the detail of the case. It was simply an explanation. We do not know whether any other matters needed to be taken into account in that ultimate decision. To be fair to the witnesses, that explanation is all that we have received. We know nothing else other than what has just been described.

**Ms TANIA MIHAILUK:** The only clarification I wanted to make was that I understood it certainly was not a case or any legal case that the gentleman was citing. A person had approached him two or three weeks ago.

**Ms JENNY LEONG:** A case study. I am happy to correct that. We were provided with a case study. To clarify—so we can move on to actually hear from witnesses—it was a case study. It was provided as a case study example. One of the witnesses had been approached and been informed of this. It is not a case as in a legal case and it was provided as evidence verbally to the Committee this morning. If you are concerned, given you may or may not have seen that evidence, I am happy to take it as a hypothetical scenario—but a scenario all the

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<sup>1</sup> Due to the audio malfunction, the witness has provided the following words 'eligible because of their religious beliefs'.

same—and ask your opinion on whether you believe that this bill would enable that action to be taken and whether you support that action being able to be taken. I am happy to go to you first, Mr Sneddon.

**The Hon. MARK LATHAM:** Further to the point of order: The matter, all other things being equal, is a case of sexual discrimination and it is because it is an non-governmental school under the existing statute. They have an exemption. We had resolved not to go those exemptions as part of this Committee process.

**The CHAIR:** We can have Ms Leong put the hypothetical or the case study to our witnesses as she has just characterised.

**Ms JENNY LEONG:** Thank you. I believe you have now heard my question twice, so I might leave it over to you to actually answer.

**Mr SNEDDON:** I will try. I am not entirely sure of the scope of the hypothetical so perhaps if I state it back to you, you can tell me if I have got a right or not. There is a non-Government Christian School—

**Ms JENNY LEONG:** Correct.

**Mr SNEDDON:** —which presumably takes the view that marriage should be between a man and a woman and is against same-sex marriage.

**Ms JENNY LEONG:** It is unclear what view they take. What we know of the case is that the person announced her engagement to a same-sex partner and was subsequently fired from her job.

**Mr SNEDDON:** Because of that announcement.

**Ms JENNY LEONG:** Indeed. Not because of bad performance—at least that was the scenario we were told this morning.

**Mr SNEDDON:** I will have a first go at it and my learned colleagues may be able to correct any mistakes that I make. First of all, on Mr Latham's interjection, I think this is already covered by the exception for private education institutions in the Act. That is not your question but, just to let you know, it would not be unlawful discrimination under the Act.

**Ms JENNY LEONG:** Thank you, Mr Sneddon. I am very aware of that exemption.

**Mr SNEDDON:** Yes. I am coming to your question. It then turns on whether you characterise this discrimination as being discrimination on the grounds of religious belief or activity, or discrimination on the grounds of homosexuality. If it is discrimination on the grounds of homosexuality, this bill has nothing really to do with that. It sends you off with an existing part that deals with discrimination on the grounds of homosexuality and the existing exception in section 56, so this bill would not change the law if it is a claim of discrimination on the grounds of homosexuality. Just expanding on the hypothetical, if the claim being made is a claim of discrimination on the grounds of religious belief, I think you would have to then assume that the school took a view in its religious ethos that marriage was between a man and a woman and not same-sex but in the religious or non-religious view of the teacher it was otherwise and you could have a same-sex marriage. Then you would land yourself within this part as a claim of religious discrimination only, leaving aside the sexuality issue. Then you would look at 22M, which says:

a religious ethos organisation is taken not to discriminate against another person on the ground of the person's religious beliefs or religious activities by engaging in conduct if the organisation genuinely believes the conduct

which is dismissing the teacher in this case—

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

That is why I wanted to throw some things into the hypothetical to ask what the belief system is, because you need to look at the two contrasting—the school's belief system to work out whether 22M in this part is activated.

**Ms JENNY LEONG:** To my second point, Mr Sneddon, do you support the ability for people to be able to take that action? In a scenario where the person who is having the action taken against them is also of the Christian faith and believes that they of the Christian faith and also are in love with someone that has the same sex as them—

**The Hon. GREG DONNELLY:** Point of order: The witnesses have been called and asked to provide evidence with respect to the bill before the Parliament. The line of question Ms Leong is now going to actually asks the respective gentleman to express their beliefs, dare I say. That is out of order. The questioning about the

bill is fine, but actually asking them about what their belief systems are is completely outside the remit of this inquiry.

**Ms JENNY LEONG:** I am happy to rephrase the question. Is it the Institute for Civil Society's view that that is acceptable?

**The CHAIR:** Ms Leong, excuse me. Just before the witness answers, you are already over time. I will allow that question, but you must answer very quickly please.

**Mr SNEDDON:** I will try and finish off quickly to say, where there is that there are many—

**The Hon. GREG DONNELLY:** Point of order: It is inappropriate to ask questions of the respective organisations' beliefs. These gentlemen here are representing organisations and have been invited in their professional capacity to deal with the bill before the Parliament. They are now being asked to express their views or opinions about the belief of their organisation. That is beyond the remit of this inquiry.

**Ms JENNY LEONG:** To the point of order: I would have thought that these witnesses and all of the witnesses before us today have been brought before this inquiry to share the views of their organisation—and indeed their own expert opinions—to enable us to negotiate whether or not we are going to be proceeding with this bill.

**The Hon. GREG DONNELLY:** Expert opinions—I agree with that.

**Ms JENNY LEONG:** I would also like to point out that the time that has been taken with points of order on my lines of questioning is slightly concerning to me.

**The Hon. GREG DONNELLY:** It's your fault.

**Ms JENNY LEONG:** I do not believe that Mr Donnelly should be allowed to make interjections like "It's all your fault" in the middle of my comment, Chair. I request an extension of time on the basis that my time has been taken up without being able to genuinely ask questions that I have prepared and written here to ask—

**The Hon. GREG DONNELLY:** Put them on notice.

**Ms JENNY LEONG:** —because Mr Donnelly and others seek to take points of order on me to attempt to silence me from being able to ask our expert witnesses questions to help us form a position on this bill.

**The CHAIR:** Thank you, Ms Leong, for your answer to that point of order being taken. We have already heard from Mr Sneddon. I say again that you have 30 seconds to address the question if the other gentlemen have a point to make. If not then we will move to our next member, Mr Lynch.

**Mr STEENHOF:** I just wanted to speak to that point.

**The CHAIR:** Please be brief.

**Mr BROHIER:** I would submit that one has to be very careful about hypotheticals like that. I was in a previous inquiry where a hypothetical was put alleging something which the Clifton Schools Australia are alleged to have done. It was checked and found not to be correct. In my submission, any such hypothetical really cannot form the basis of this Committee's decision.

**Mr STEENHOF:** I would also like to say that in considering a hypothetical, some consideration of detail will really be needed. Clause 22M, which might be requisite to the question, requires it to be consistent with the beliefs of that school. If the school has a covenant or a belief that it has advised all teachers of and requires teachers to hold to on sexual morals, and it applies that inconsistently in this case, then it would not be able to defend that behaviour under this clause. It needs to be a policy that is very clear and applies not just to homosexual staff but to all staff in terms of its requirements for staff conduct.

**Ms JENNY LEONG:** Can I just address the point that I made about the fact that the majority of my 10 minutes of time—of which five minutes was ceded from Mr Greenwich—was used by dealing with points of order as opposed to actually allowing questions? We can go back and look at the Hansard record. I would like to request a brief extension of time. I have one more question that I would like to ask and I would like the opportunity to ask it.

**The CHAIR:** My ruling on that is that we keep moving through the members.

**Mr PAUL LYNCH:** Take my five minutes.

**The CHAIR:** Excuse me, Mr Lynch. Ms Leong has made a request for her time to be extended. My own view is that we should move through the members that are already on the list who have not had a chance to



ask a question. If there is time left over, Ms Leong will have an opportunity then. Mr Lynch has surrendered his time and I now move to Ms Mihailuk.

**The Hon. CATHERINE CUSACK:** If it assists, I am very happy for my time to be allocated to the member because I am very interested in that line of questioning.

**The CHAIR:** Thank you, but it is Ms Mihailuk's turn.

**Ms TANIA MIHAILUK:** I am loath to raise another hypothetical. There have been a number of hypotheticals raised today and the one that I am referring to is what Equality Australia raised earlier in the day. I am conscious of the fact that our panellists may not have actually watched that particular session. I think it was on the back of one of Dr McGirr's questions where Mr Ghassan Kassisieh from Equality Australia responded with an example about employment and discrimination relating to a hypothetical of a bank employee having carriage of determining who does and does not receive a loan.

The employee relies on their religious conviction to not afford an individual a loan based on some particular view of that individual and it was suggested that this bill would somehow protect the right of that individual. I had myself wanted to raise a question at the time to that gentleman but we ran out of time. I wanted to ask the panellists their view on that particular hypothetical. I appreciate that it is a hypothetical but I think it is important that there be a response to it, because there was no opportunity at the time to respond to that statement made by the lawyer from Equality Australia. It is important that there be some clarification about whether what was being suggested by that gentleman would create some sort of right through this bill being enacted.

**Mr BROHIER:** That seems an impossible scenario because the applicable provision would be clause 22W, "Provision of goods and services". That only provides that a person cannot discriminate against another person on the grounds of religious beliefs or activities so you cannot do that. That is what this Act is saying. It seems in my respectful submission that there is a confusion between that clause and 22M that has caused all the angst. All 22M does is say that a religious ethos organisation is not taken to discriminate against another person if this particular conduct is consistent with their doctrine's beliefs. Unless a bank—unless the NAB, the CBA or Westpac—is a religious organisation, this Act says nothing to it. In my submission, none of those giant corporates are.

**Ms TANIA MIHAILUK:** But could the individual rely upon their religious conviction to not be sanctioned by the employer?

**Mr STEENHOF:** I cannot see any part of this bill that would allow that in any way, shape or form. The only protections that are given to employees against action from their employers is for conduct outside of work. Any conduct inside of work is subject to the employer's direction and must be done in accordance with their policies and principles. That employer would be subject to the Anti-Discrimination Act and an employee could not appeal to a religious conviction for their conduct inside the workplace. It is absolutely not possible under this bill.

**Ms JENNY LEONG:** Point of order: I did not want to interrupt in the middle of the flow of that question but I believe it is important to put on the record that all of our witnesses feel very comfortable to provide their expertise and advice and comment on that hypothetical situation but not on the hypothetical situation that I presented before. I think it is important for that to be on the record.

**Mr SNEDDON:** If I could put on the record, I did attempt to respond to Ms Leong's hypothetical and I will attempt to respond to this one as well.

**Ms JENNY LEONG:** I appreciate that, Mr Sneddon. Sorry, I should not have included you in that mix.

**Mr SNEDDON:** My understanding is that this actually came from the testimony of Mr Ghassan Kassisieh, which I saw part of this morning. He was talking about whether or not the activity of the bank officer might have been unlawful in the sense that the bank officer might have leaked some documents to someone to sabotage a loan or something like that. In other words, there was a bank officer who for religious reasons—I am not sure what they would be—leaked documents. It breached the duty to the bank and the bank's duty to the customer, causing trouble for the bank and for the customer. Would the bank have been disabled from taking action against the officer over what they did for religious reasons by clause 22N because it was discrimination by the bank? The short answer is in 22N (2):

It is unlawful for an employer to discriminate against an employee on the ground of religious beliefs or religious activities ...

But I do not think this is a discrimination. The form of discrimination would be an indirect discrimination. That is going to be under 22L (2), which says that if you apply a policy—i.e. do not go leaking people's documents contrary to your duty of employment—that applies to everybody.

The question is: Are you requiring religious people to comply with this in a way you are not and it is unreasonable to do so? There is a reasonableness defence there, which is expanded by clause 3 in the Siracusa Principles, but I do not think any court is going to say it is an unreasonable policy for a bank, including taking account of the Siracusa Principles, to say to its employees, "You must not go leaking customer details or engaging in unlawful acts." I cannot see this would ever get up as an indirect discrimination claim, so the bank should be able to do what it has done in the particular hypothetical as I understood it being put by Mr Kassisieh.

**Ms ROBYN PRESTON:** Thank you, gentlemen. I am just referring to the Australian Christian Lobby submission, Mr Brohier, in relation to all rights being equal. If you could expand on that, you said it should include reference to all rights being equal?

**Mr BROHIER:** Could you quickly direct me to that portion of the submission?

**Ms ROBYN PRESTON:** I have not got that in front of me. I just have here that in the synopsis of your submission the objects clause, you said, was fine, but it should include reference to all rights being equal as such.

**Mr BROHIER:** The fundamental proposition is what I made at the beginning of this inquiry. The ICCPR is an amalgam of rights. There is no hierarchy of rights. Therefore, this Act should have this protection as one step towards getting Australian human rights law into step with the ICCPR because our law has enacted and litigated article 26 across the board but has not paid much regard to the other rights. All rights being equal means the right of non-discrimination must sit alongside the freedom of religion, article 18, and freedom of expression, et cetera. It cannot be allowed to be a dominant right, otherwise it warps human rights understanding.

**Ms ROBYN PRESTON:** Thank you. Further to that, in 22N (3) to (9) you talk about—appropriate as employees should be able to express their beliefs on social media away from the workplace when it has nothing to do with the company for which they work. If you would like to expand on that, I would appreciate that.

**Mr BROHIER:** The obvious example, member, is the example of Israel Folau, who expressed his religious belief outside of work—nothing to do with his playing of rugby—and not only lost his employment but he lost his ability to work in his chosen profession in Australia and, until the settlement, across the world. Employees are not slaves. Codes of conduct were never meant to make employees slaves of employers. Therefore, some redress has to occur in the legislation to allow employees to have the liberty to express their views, subject to law, in private. The employer, unless it impacts directly on the business, should have no recourse. In the explanatory memorandum the Hon. Mark Latham says this is unashamedly on the side of individuals rather than corporates.

That, respectfully, is correct because we have seen in the Israel Folau case corporate Australia attempting to muzzle a person outside of the workforce—nothing to do with their employment—for their own commercial benefit. That is why some sort of legislation like this provision is required.

**Ms ROBYN PRESTON:** Thank you. Would the other witnesses like to comment? Mr Steenhof, did you wish to comment?

**Mr STEENHOF:** Sure. Just follow up what Mr Brohier says, we deal with inquiries from regular, everyday Australians who face the same sort of hostility for comments that they make on social media that express their religious views. I am aware that this is a growing problem in an increasingly polarising society—that people who do not like the views and expressions that are made by others will attack their employment rather than engaging with the ideas that they meet on the internet. This is particularly happening in the regulated professions.

We have ample examples of doctors and health professionals who face investigation by medical boards for comments that they have made on social media, often which have only been found by offence archaeology—by deep-diving into their history—where activists have weaponised the complaints procedures that are there to try to put their jobs at risk. Not just doctors, but also people in all sorts of occupations throughout Australia—public servants, security guards, taxi drivers. It is a growing problem and this bill provides some balance to what is otherwise an overreach by employers and regulators.

**Mr SNEDDON:** Very briefly, I support the principle of this. The Institute for Civil Society [ICS] thinks there is too much restriction on people's free speech and what they do outside of their work hours. There is also still the Federal vilification and other legislation, so this is not open slather. It is simply saying the ability of an employer or another group to sanction people privately for what they consider to be unacceptable statements made outside of work should be curtailed. We agree with that principle.

**The CHAIR:** Ms Cusack, do you have questions or will you pass?

**The Hon. SCOTT FARLOW:** I think she already sent them to Ms Leong previously.

**The Hon. CATHERINE CUSACK:** I allocated my questions to Ms Leong because I was hoping for her to pursue that line of inquiry.

**The CHAIR:** We will come back to that, then. Mr Dib?

**Mr JIHAD DIB:** Thank you, Madam Chair. Good afternoon, gentlemen. Thanks for doing the midnight shift with us. I think we have had enough of the hypotheticals but I am going to throw one more. Earlier today there was testimony about someone who had sent emails to people outside of work hours—but they were actually to their work email addresses—that could be considered either hateful or offensive. Where do you feel this legislation works in relation to that sort of an event? For example, I am outside of work hours but I am using my work email address, sending an email that could be considered hateful or offensive to my colleagues. It is a real grey area.

**Mr STEENHOF:** My initial response to that question—I think what you raised there, Committee member, is a good point. This needs to have some balance, to find the balance between unnecessary overreach and the kinds of out-of-work activities which are directly going to affect employees and employers. So, there is no doubt that that needs some consideration, but I do believe that it is certainly going to be to the detriment of an employer if an employee is using the work email for the circulation of hateful messages to other employees. It would not come within the protections offered here because, even though it is outside work hours, it would be to the direct financial detriment of the employer, I think, and a court would find that.

**Mr JIHAD DIB:** In other words it is a protection for people? It is not to be done. This legislation does not allow them to do that? It does not facilitate the opportunity?

**Mr BROHIER:** That certainly in my respectful submission the intent of 22M (4) because that talks about religious activity performed by the employee that had occurred at a time other than when the employee is performing work. That is one of the criteria and using a work email could be performing work if you are using your employers resources, and then the point that John Steenhof made. That would have to be worked out in the courts but that certainly in my submission there is no intent in 22M (4) to protect use of employers resources for personal activities.

**Mr JIHAD DIB:** Thank you, Mr Brohier. I am just going to try a different type of question. We have heard the "what" about the legislation and what everybody's thoughts are about it but if someone wants to give a quick reasoning as to the "why". Why do you think, and you are all very supportive of it, why do you think we need this legislation?

**Mr BROHIER:** Could I just kick off on that? The ICS referred to two cases in their submission. I was counsel for both of those people. We are having ordinary Australians being subjected to litigation and anti-discrimination processes which impose the tremendous strength the young university student, unless there was assistance for him, would not have been able to contest that matter. So, the lady named Patricia I acted for in a separate action to what is referred to in the ICS against her tertiary institution, and ordinary Australians are feeling the pinch of this activity to restrain freedom of expression. That is the why in my submission. The philosophical why is that there has to be the balancing of rights which I have talked about earlier.

**Mr STEENHOF:** I would support that by saying that we actually see real cases all the time coming from New South Wales of people who have potential claims for religious discrimination which they would be able to take in any other jurisdiction but which they cannot take simply because they are residents in New South Wales. The only other State in Australia which is in a similar position is South Australia but every other State and Territory protects religious freedom in the way that this bill is going to protect. We have real cases of people who have been kicked out of cafes for sitting there reading the *Bible* in a way that made other patrons feel uncomfortable, and in New South Wales there simply is no recourse for them to get justice in that situation. They were kicked out.

**Mr SNEDDON:** Can I add to that very quickly, Chair.

**The CHAIR:** Very quickly, yes.

**Mr SNEDDON:** I agree with what has been said there. The site which we referenced, [Australiawatch.com.au](http://Australiawatch.com.au), has a number of examples of that sort of discrimination happening against Christians but you can also read if you go and look at the Muslim index of discrimination against Muslim people you will see that there is plenty of example of discrimination against Muslims on the grounds of their religion. This is not just a Christian issue, this is an issue for lots of religious people and I frankly think it is a scandal that New South Wales and South Australia do not have this in their Anti-Discrimination Act. It is not just your own Act. Because you do not have it in your Act, you remove certain Fair Work Act protections for your citizens because the Fair Work Act anti-discrimination provisions turn on whether it is covered in the New South Wales Act. It is not just

that you do not have it in your own Act, you take away the rights of your citizens under the Fair Work Act. I think it is a gap that desperately needs to be filled.

**The Hon. GREG DONNELLY:** With respect to the balance of the witnesses who have come before the inquiry today to give evidence who do not support the proposed legislation, a consistent theme through all of the evidence is that we should not act now but wait for a full root-and-branch review of the New South Wales Anti-Discrimination Act. I would appreciate your thoughts and views about that position?

**Ms JENNY LEONG:** Point of order, Chair. Mr Donnelly picked me up on my description—

**The Hon. GREG DONNELLY:** Chair, I would like the clock to stop.

**The CHAIR:** Mr Donnelly, I will hear the point of order.

**Ms JENNY LEONG:** Mr Donnelly picked me up on my description and there was a big debate about how I presented evidence that had been presented to us verbally. As part of that submission, some of those who were supportive of that approach recognised that there may be a quick action that could be taken to insert protection from religious discrimination on the grounds of religious belief in their current—

**The Hon. GREG DONNELLY:** It is a debating point. I ask for the clock to be stopped. This is a debating point.

**Ms JENNY LEONG:** —in their current way that the other grounds are protected and then to undertake a holistic review of the Anti-Discrimination Act.

**The Hon. GREG DONNELLY:** I asked for the clock to be stopped. The member is debating my question.

**Ms JENNY LEONG:** Mr Donnelly has only provided part of what was the evidence that we heard for those who were supportive of the idea of a root-and-branch review of the Anti-Discrimination Act.

**The Hon. GREG DONNELLY:** That is a debating point.

**The CHAIR:** I will allow the question. Mr Donnelly, would you put the question to the witnesses.

**The Hon. GREG DONNELLY:** I think the witnesses heard my question.

**The CHAIR:** Okay, gentlemen, to you.

**Mr SNEDDON:** I am happy to respond quickly. I think in all the other instances where there has been an addition of another part to this Act to protect against homosexual discrimination, homosexual vilification, transgender discrimination, disability discrimination et cetera, et cetera, et cetera, over the last 30 years where we have had this Act never once to my knowledge has anybody said, "No, no, no. Let's not do that until we do a root-and-branch reform of the Act." Never once. And then when religion comes along and says, "Well, let's put that part in"—"Oh, no, no. Let's do a root-and-branch reform of the Act." It sounds a little convenient to me. By all means, if you want to do a root-and-branch reform of the Act, do it but do this first.

We have had a religious freedom debate in this country for three years. We have had the Ruddock inquiry with over 15,000 submissions. We have had a clear recommendation from that inquiry that this should be done. It should not be held up while New South Wales works out whether it wants to do a root-and-branch reform of its Act. It can put this part in in Mr Latham's form or another form, and then if it wants to, do a root-and-branch review.

**Mr BROHIER:** I make the submission that I made to an earlier parliamentary inquiry on another bill amendment proposed by the Hon. Mark Latham. If you look at the amendments to the Anti-Discrimination Act almost every section has been amended. That is how legislation works. You start something off and then you seek to amend it and you put something in. In my submission, to say you have to wait to rewrite the whole Act is simply not sensible, respectfully.

**Mr STEENHOF:** I support what both Mr Sneddon and Mr Brohier have said. The idea of a root-and-branch review is not mutually inconsistent with passing these long overdue changes to fill what is a clear gap and has been noted as a clear gap for over 20 to 30 years.

**The Hon. GREG DONNELLY:** Thank you. I direct my last question to Mr Sneddon. With respect to your submission, I invite you to go to page No. 3. I can see you but you cannot see me. I apologise for that. On page No. 3 there is a heading in bold that says:

Unpicking the Criticism of the Bill as a Preferencing of Religion

It runs down the page over to page No. 4 and then two paragraphs down that particular point ends. Can I go back to page No. 3 and take you to the last sentence in that paragraph directly under the heading. This is the position articulated by Equality Australia who gave evidence earlier today. It says:

This Bill threatens to undermine equality and could cause real harm, particularly for LGBT people, women, the unmarried and divorced, and people with different beliefs to the faith-based organisations they interact with.

Is the quote from their submission. You say, Mr Sneddon, in the next paragraph:

This criticism is erroneous and misleading. It is misleading because the Bill is only about discrimination on the grounds of religious belief (or its absence) – it provides no protection for anyone to discriminate against any person because of their LGBT attributes, their gender or marital status.

I put the question to the representative from Equality Australia today if he agreed with that statement of yours and he said, "No. It is wrong." He does not agree with that. Mr Sneddon, can you please elucidate further what you are saying in that second paragraph and make it a bit clearer?

**Mr SNEDDON:** Sure. I was trying to read the mind of Equality Australia as to why they made the statements that I quoted from their website, and like I have to read into Mr Kassisich's "no" to your question. It would be good if maybe he did expound it. I did not hear his exposition. But criticism is misleading at one fundamental level because the Bill does not enable anyone to discriminate against LGBT people on the grounds of their sexuality, against women on the grounds of their gender, against the unmarried on the grounds of their relationship status, or the divorced. And the only point where it does have some—and I do go on to discuss this—effect is where there is a discrimination against people of different beliefs to the faith-based organisations they interact with. It is only that last point. It has some merit. I then in the following paragraphs unpick that.

It is a bit like Ms Leong's question about the school teacher who was sacked because she got engaged to a same-sex partner. If it was discrimination on the grounds of homosexuality, this bill says nothing about that. You go back to the rest of the Act and look at it. That is point number one. Point number two is, in respect of say section 22M, where a religious ethos organisation is allowed to, it is not discrimination for them to impose a detriment which is in accordance with their religious beliefs on a person who is an employee or a member. I say that is defensible on the same basis that it is defensible for Equality Australia or the Sydney Gay and Lesbian Mardi Gras to say if you are not going to be on board with the program of the organisation, if you are going to work against us, we should not be forced by anti-discrimination law to hire you or retain you.

It is just a normal principle for organisations that they should be able to have on board people who work for the organisation. When I get to the third part, which is about services, which I mentioned before, I think section 22M needs to be nuanced because if a religious ethos organisation was providing service or goods to the public on a commercial basis without any limitation, I think people have an expectation that there would be no discrimination. That bit needs to be nuanced. Does that answer your question?

**The Hon. GREG DONNELLY:** Thank you.

**The CHAIR:** We are at the end of the session. I thank you very much for your time. You can see that the bill has inspired different views on the Committee, which is healthy. I thank you for your respectful answers to the members of the Committee. I do not believe there were any questions on notice put to witnesses.

**Mr SNEDDON:** May I ask, Chair, in the course of preparing for today I had prepared some additional notes. Is it in order, and would it be of assistance, for the Committee to make that as a further submission to the Committee?

**The CHAIR:** We will deal with that. We are having a meeting straight after this, so we will deal with your very helpful request. Thank you, I appreciate your time. Gentlemen, thank you for submissions and patience.

**(The witnesses withdrew.)**

**The Committee adjourned at 16:49.**