

**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 Thursday 5 November 2020**

**The Committee met at 9:15.**

**PRESENT**

The Hon. Gabrielle Upton (Chair)

**Legislative Council**

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

**Legislative Assembly**

Mr Jihad Dib  
Mr Alex Greenwich  
Ms Jenny Leong  
Mr Paul Lynch (Deputy Chair)  
Ms Tania Mihailuk  
Ms Robyn Preston  
Mr Gurmesh Singh

**PRESENT VIA WEBEX**

**Legislative Council**

The Hon. Catherine Cusack

**Legislative Assembly**

Dr Joe McGirr



**The CHAIR:** Good morning, everybody, and welcome. Before we start I acknowledge the Indigenous owners of the land on which we meet today and pay my respects to their Elders past and present. I thank you very much for getting here under challenging weather circumstances. The hearing is broadcast to the public via the parliamentary website. This is the second day of hearings. There will be another hearing tomorrow and a subsequent hearing in the middle of November. There are going to be strong opinions. Witnesses will probably have strong opinions, as do members of the Committee, of different persuasions. We will extend to you our courtesy and respect in the hearing today. If you want to take time to pause or hear the question again, the forum is yours to ask for that courtesy.

**MARY O'SULLIVAN**, NSW Executive Committee Member, Women's Electoral Lobby, affirmed and examined  
**HAYLEY FOSTER**, Chief Executive Officer, Women's Safety New South Wales, affirmed and examined  
**KELLIE MCDONALD**, Senior Solicitor, Women's Legal Service NSW, affirmed and examined

**The CHAIR:** We will begin with our first witnesses. I will just say that we have accommodated the fact that we have a very big committee and limited time, so we will jump straight to questions. What we will do is, on an alphabetical rotation, give each member five minutes to ask a question and that five minutes is for an answer as well. There will be a little bell or alarm; do not be concerned about that. We do not guillotine you at that point but it is to keep us on time. Some members may say that they do not want their time at that point so we have a bit of time at the end and we add their time to it. There will then be members who either want additional questions or to ask a question for the first time. That keeps us moving quite rapidly and makes sure that we share the questioning around your representation today. So we will start straightaway. The first question to be asked on that rotational basis goes to Mr Latham. Good morning, Mr Latham.

**The Hon. MARK LATHAM:** Good morning, Chair, and thank you to the witnesses. If I could just start with Hayley Foster. In drafting the bill we were very careful not to impact on the abortion bill in New South Wales that was passed last year and the Committee has had high level legal advice confirming that. So what is the basis on which you are suggesting in your submission that if the New South Wales Parliament was to protect people from religious discrimination their response would be to go out and engage in domestic violence? What is the evidence or logic supporting such a proposition as you have got here?

**Ms JENNY LEONG:** Point of order: I believe this is a point that I raised previously in our earlier hearing. If members are going to refer to advice that the Committee has received in confidence—and, to clarify, I would assume that Mr Latham is referring to the advice that we received from the Department of Communities and Justice that was a briefing provided in private to members when he refers to "high level legal advice"—it is important for us to either share the direct advice that we received so that Ms Foster can actually view the advice we received from the Department of Communities and Justice in full and then provide a response or alternatively for Mr Latham to ask the question simply based on the submission, not assuming that we received "high level legal advice" contradicting that submission. Because, with the greatest of respect, I do not believe that we all saw that advice and that response in the same way. So either the advice that we are referring to, if it is indeed that advice, should be shared with Ms Foster so she can take that question on notice and reply back with her expertise, or we just ask about the submission.

**The CHAIR:** I hear your point of order. I understand the point—

**The Hon. MARK LATHAM:** To the point of order, if I can—

**The CHAIR:** No, excuse me, Mr Latham. Would you like to reframe the question?

**The Hon. MARK LATHAM:** No, I am going to speak to the point of order.

**The CHAIR:** Okay. Speak to the point of order.

**The Hon. MARK LATHAM:** I am asking a question based on the advice available to me as a member of Parliament. It would be infringing on my privileges as a member of Parliament to say that I cannot ask a question based on advice that has been given to me as part of a parliamentary process. We have had a briefing from New South Wales officials. The information is clear and I frame my question based on that information. If the witness has advice to the contrary of a legal format then I am sure she will put that to us and explain the nature of the submission here. But I cannot be asked to withdraw information that is available to me as an MP.

**The CHAIR:** Okay. I am going to allow the question. Mr Latham, please proceed.

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

**The Hon. GREG DONNELLY:** Point of order: You have made a ruling, Chair.

**The CHAIR:** Are you contesting my ruling, Ms Leong?

**The Hon. GREG DONNELLY:** She is contesting the ruling and that is a very serious matter.

**The CHAIR:** I will allow the question but if you are contesting my ruling we will go into deliberative session and we will deal with the question then.

**The Hon. GREG DONNELLY:** Yes, absolutely. She is contesting your ruling.

**Ms JENNY LEONG:** I am contesting your ruling, Chair.

**The CHAIR:** We will have the witnesses leave the hearing room. Witnesses, please bear with us. This is a robust process. This is not a reflection on you, but we have to deal with this matter.

**(Short adjournment)**

**The Hon. MARK LATHAM:** In drafting the bill, we were very careful to ensure that we were not walking back any of the provisions of last year's abortion bill. That would be wrong and counterproductive in the passage of this legislation. The Committee had a briefing from Department of Justice officials along the same lines. You pointed out in your submission that that is not the case, and the link between coercive reproductive activities and domestic violence would mean that the passage of this bill to protect people on the basis of their religion would lead to an increase in domestic violence. I am looking for the linkage, thinking and the legal advice that you might have to sustain that statement.

**Ms FOSTER:** Could you refer to the section of my submission where I said that it would lead to domestic violence?

**The Hon. MARK LATHAM:** Why are you asking me that? You say that there is a strong correlation between domestic violence and reproductive coercion.

**Ms FOSTER:** Correct.

**The Hon. MARK LATHAM:** And you are saying that this bill leads to reproductive coercion. You are stringing out that argument. Are you saying that there is no impact on rates of domestic violence from this bill?

**Ms FOSTER:** The submission that I have made does not make the claim that this bill would necessarily lead to increased domestic violence. What it does is highlight a concern around the ability to withhold or deny access to reproductive health services, or a range of services—government services—and we also have concerns around access to trauma-informed care and counselling, and those sorts of things, if someone was able to deny care, or alter or adapt that care, on the basis of their religious faith. If someone who was experiencing domestic or family violence goes to, for example, a relationship counsellor and that relationship counsellor is adapting their care in response to or as a result of their faith, a domestic violence survivor might hear from that counsellor that she ought to obey or submit to her husband.

If somebody was to access services after taking the very courageous step of leaving a domestic violence relationship, or trying to access help for the first time, that could have a really detrimental effect on them in terms of their trust in accessing services in terms of feeling judged, and also in terms of the trust that they can reach out, be believed and be supported in accessing safety. So that is the kind of concern that we have. Ultimately, there may be an increase in domestic violence if somebody is not supported to leave a violent situation, but that is not the case that we have made here. The case that we have made is that it could make access to critical services more difficult that women, children and anyone experiencing violence need to access safety.

**Ms JENNY LEONG:** Ms McDonald, in part nine of the Women's Legal Service submission you raised concerns around professional licensing bodies disciplining members. Could you explain a bit more about that risk from your perspective?

**Ms McDONALD:** We are concerned about the broad definition of religious activities. The definition includes any activity that is not imprisonable, so we are talking about very serious offences. The broad definition allows people to act in particular unlawful ways that do not lead to their imprisonment. So it allows them to breach guidelines and contracts, and it allows them to breach the Anti-Discrimination Act in the name of faith. We are concerned, for example—similarly to what Ms Foster was saying—that when a woman approaches a doctor and that doctor has a conscientious objection that means they refer that person to a service provider that they reasonably believe will provide them with the information and resources they need but they then fail to do so on the basis of their faith, arguably a disciplinary body could not sanction them for their failure to comply with that obligation because it is not an offence that is imprisonable.

So we are concerned about important members in the community, like police officers, making comments outside their workplace on the basis of their faith. They may have a view that women should be subservient to their husbands and they make that statement on Facebook, identifying themselves as a police officer. Arguably, the police cannot sanction that police officer for that behaviour that damages the NSW Police Force's otherwise good reputation because it was a religious activity that happened outside of work hours and did not have a material financial impact on the police force.

We are worried that women already have incredible barriers when reporting to the police for lots of different reasons. Aboriginal women may fear ongoing institutional harassment. They worry that their children are going to be removed if they report that they are victims of domestic violence. Obviously many women who are culturally and linguistically diverse have a lot of pressure from their own families to maintain the sanctity of that marriage and of that family. So women already have incredible barriers. If women see that police officers are making statements that suggest that they are not going to be believed, or that they are going to be encouraged to return to a relationship, it is just another barrier that women face when reporting to the police. I think that everyone

would want women to report to the police, to seek safety and to keep themselves and their children safe. This bill has the potential to discourage women from doing that.

**Ms JENNY LEONG:** Dr O'Sullivan, I am happy for you to take this on notice because we have limited time per member, but could you share your views and the those of the Women's Electoral Lobby, particularly on section 22Z of the bill from your submission, which outlines the risks that you see with so-called religious ethos organisations as defined in the bill taking actions against the Government if this One Nation bill was to be passed?

**Dr O'SULLIVAN:** Thank you for that question. I thank the Committee for inviting the Women's Electoral Lobby to attend the inquiry. I am talking not from a legal expert perspective, but from the perspective of an appraisal of the bill as part of an expert organisation in relation to women's advocacy. We are concerned, in particular in relation to religious ethos organisations, that the clause appears to give a status to organisations that are based on faith and teaching particular beliefs and tenets that go beyond the exceptions that are already provided in the Anti-Discrimination Act.

Our particular concern relates to two areas especially. One in relation to the potential impact on employment, because a number of those organisations have a vast sweep of services in New South Wales in terms of care services, health services, et cetera. The second area is the authority that the bill gives to those organisations, which already have a major public presence in service provision in New South Wales, to take a complaint on the basis of government programs, government health orders or other types of government provisions. That could mean that those public health provisions such as family planning programs could be effectively undermined or could be rejected and then we would have a complaint process proceeding through the Anti-Discrimination Board. They are major concerns.

Those concerns are reflected in a number of submissions, in particular in relation to employment where those organisations employ a large number of professionals as well as care workers. Should they gain greater authority in relation to their employees in terms of their religious identifications but also their adherence to tenets, teachings and doctrines, then there is a possibility that such employees could be subject to a much more rigorous test and assessment in terms of their adherence to particular faith strictures. The Australian Medical Association [AMA] reflects this concern in its submission in relation to medical professionals.

**The CHAIR:** Dr O'Sullivan, thank you. We have gone into Mr Lynch's time, but he is happy to let you continue to answer, so please continue.

**Dr O'SULLIVAN:** Well, I think I have said all that we need to say at this point. We are conscious that the bill is as yet—obviously, it has not been passed—untested and those possibilities will only be realised through the courts should that section of the bill be retained in any legislation. I would emphasise that the Women's Electoral Lobby's [WEL] concern is reflected in substantial number of other submissions. Our particular concern, as I emphasised, is that a large number of women are employed in the service care provision, health provision and social service areas, both in the lower areas but also in the professional areas as well.

Many of those women, particularly in some of the care services, are obviously women of non-English-speaking background and of diverse and minority religious identifications. We have a concern as well for those women who, for example—I will make a crude example, perhaps—who work in the aged-care sector who come from an Islamic background or women who work in a hospital with public funding who may be Catholic in identification. Of course, there are many people of my background who are Catholic in identification but have various practices that diverge from doctrines, tenets, beliefs and teachings and that also potentially captures those employees as well. Again, the Australian Medical Association, which I know it is not presenting to the Committee, raises that danger as well.

All of the research, for example, the National Church Life Survey that the National Council of Churches in Australia—but it was called the Australian Council of Churches—publishes every couple of years is a fascinating series of documents. It makes big differentiations between religious identification—which can be cultural, historical, family—and actual intense faith involvement and the large number of Australians who go to church now and again, or once every couple of years. If you look at some of our major religious health providers, for example, and think about the people who work in those health providers, which might be public hospitals, you would know people who have different religious affiliations and many of them might belong to the particular religion that runs that facility but have all sorts of practices that might be contrary to the particular teachings, tenets and doctrines. I am concerned that this could have a very narrowing effect and also, as the AMA says, narrow the range of expertise that such facilities can access.

**The CHAIR:** Thank you very much, Dr O'Sullivan. We will now move to our next member, Dr McGirr.

**Dr JOE MCGIRR:** I thank all the witnesses for coming. I appreciate you making submissions. My question is to all witnesses and I guess it comes back to partly the issue just raised by Dr O'Sullivan in relation to

organisations ignoring government health orders. Somewhat connected to that is an issue in a number of submissions, which you have already touched on but that I want to revisit, in relation to the enforcement of professional standards. Concerns have been raised that all of the bodies will not implement professional standards in relation [audio malfunction]. I would like comment from the witnesses in relation to that and also the issue of ignoring public health orders. In relation to section 3 of the proposed legislation, which specifically references the need to balance other rights and specifically includes reference to issues around public safety or to health and the rights and freedoms of others, it is an important issue and I would appreciate the comments of witnesses on that issue.

**Ms McDONALD:** We obviously support the right of people with faith or no faith. They deserve protection from discrimination. But the bill privileges and prioritises religious belief and activity over other protected attributes; it does not properly balance the fundamental rights that we all have. That is the primary goal of discrimination law. Human rights are universal, indivisible, interdependent but rarely absolute so we say that despite—the intentions of the International Covenant on Civil and Political Rights are to balance those rights and we say that this bill does not do what the ICCPR requires discrimination law to do. It privileges religious beliefs over other important fundamental rights like the access to reproductive health care and the right to live free from discrimination.

**Dr JOE McGIRR:** Sorry, how does that privilege it? Given that there is a specific reference to inclusion of reference to the international articles and a genuine commitment [audio malfunction]? I do not understand. This keeps coming up [audio malfunction] and yet, under the circumstances specifically outlined here, where these needs need to be balanced.

**Ms McDONALD:** The provisions in the bill do not allow the balancing of fundamental rights so despite the reference in section 3 to that intention, the bill does not in fact do that.

**Dr JOE McGIRR:** Yes. That is what I am asking. I know you have said that but could you take me through your reasoning behind that?

**Ms McDONALD:** Why it is that it does not balance those rights?

**Dr JOE McGIRR:** Or why it is that you have got that view, yes.

**Ms McDONALD:** As I have talked about before, the definition of religious activity is too broad and it sets up religion as a shield to committing unlawful offences that do not give jail time. It allows faith-based organisations to discriminate against people on the basis of otherwise protected attributes. It broadens already broad exemptions to religious bodies. We are in fact not happy with the existing exemptions that allow organisations set up to propagate religion to discriminate. We think that, for example, at a minimum those organisations that receive Government funding should not be allowed to pick and choose who they provide their services to. So it is a combination of all of those things that privilege religion, or religious belief and activity, over those other rights. Of course we believe that people should not be discriminated against on the basis of their faith but by the same token religious belief should not trump other fundamental rights, and this is what we think this bill does despite the inclusion of the reference to needing to balance those rights in section 3.

**The CHAIR:** Thank you, Ms McDonald. The next question will be from Ms Mihailuk.

**Ms TANIA MIHAILUK:** Thank you, Madam Chair. I want to make only a couple of points. Ms Foster, in relation your submission, I am a loath to say this but I always have a really good look at statistics and footnotes that submitters rely upon. I just noted that in the paragraph where you talk about reproductive coercion, it refers to a range of male partner pregnancy controlling behaviours and that refers to footnote 1, which is an American publication, and then it refers to unintended pregnancies are two to three times more likely to be associated with intimate partner violence than planned pregnancies and that also refers to that American publication from about 10 years ago.

I am not suggesting that none of these circumstances may not arise but I put to you is it possible also that there are elements of this where I am not sure how accurate that data is in terms of reflecting the circumstances here in New South Wales. But also I put to you that perhaps there is also data available as to women being coerced into abortion. I was just speaking with the Bankstown Women's Health Centre's CEO who would say that there are equal numbers of women being forced into abortion as there would be women being forced into keeping pregnancies. Do you have any view on that?

**Ms FOSTER:** Yes. Look, those are references to American studies because there has been a lot more research done in America in relation to that particular issue. There are studies that have been undertaken in Australia and also empirical evidence as well. It places reproductive coercion between one in two and one in four victims who are survivors of domestic and family violence. You know, look, the reality is those. We surveyed as



part of coming to give evidence here. We did a short survey with survivors themselves of domestic and family violence themselves of their experience with reproductive coercion. Over a 24-hour period we had 20 responses and all but one had said that they had experienced some level of reproductive coercion as part of the violence, abuse and coercive control that they had experienced.

**Ms TANIA MIHAILUK:** Where was that survey undertaken?

**Ms FOSTER:** This is here. This is what we have done with survivors. Just speaking directly with survivors, it is actually really quite prevalent. Although we know from the Australian Bureau of Statistics that less than one in five women will report sexual violence, we know that when we speak to women about their experiences what they are prepared to, I guess, disclose in a more private environment with a trauma-informed specialist. Those rates are significantly higher. Going to your point as to whether somebody who is experiencing coercive control is more likely to be pressured to have an abortion, for example, as opposed to being more likely to being forced to become pregnant, I do not have the evidence on that at hand. I can say that I am happy to take that on notice but I can say from my frontline experience, working with women in the context of domestic and family violence who have experienced coercive control and reproductive coercion, there are both, but by and large it tends to be—

**Ms TANIA MIHAILUK:** There is definitely both.

**Ms FOSTER:** There is definitely both, yes.

**Ms TANIA MIHAILUK:** As I gathered examples from the Bankstown Women's Health Centre, there certainly has—

**Ms FOSTER:** I guess I am just going to my experience base and that is that, by and large, it is more about forced sex. It is about tampering with contraceptives, also controlling finances so people cannot access those but also around, you know, removing contraceptions and those sorts of things or access to them. What we know is that for many women that is part of entrapment—being entrapped in an abusive relationship. Once they become pregnant there is that ongoing kind of connection.

**Ms TANIA MIHAILUK:** Obviously now we have changed. The reason I mentioned the American studies is I think it is really difficult to compare us to America, given the sort of legal positions that are very, very different from our law here and many States of America where, clearly, abortions, depending on which State you are in, will determine the access that you have.

**Ms FOSTER:** Yes.

**Ms TANIA MIHAILUK:** Clearly, here we have legalised abortion and certainly women have a right to abortion. I just wanted to preface my concern in the way you have written that up, but I accept that that is a real prevalent concern. But I also accept that equally there are concerns about women being forced into abortion and I would be interested to know if you have any statistics on that. I think you said you do not have statistics to hand but I would be interested to know.

**Ms FOSTER:** Yes. Look, I am really happy to take it on notice around the prevalence between, you know, women's experiences of reproductive coercion and whether they are more likely to receive pressure for an abortion as opposed to pressure to become pregnant.

**Ms TANIA MIHAILUK:** Whether we even have those statistics available is another story. It is difficult. I guess I would say about the American research as well, is that it is not about access to abortion. That research is, and it was referred to because it was quite extensive research, meter evaluations. I think that was why it was referenced.

**Ms TANIA MIHAILUK:** I note one of them is from 10 years ago though, Ms Foster.

**Ms FOSTER:** Yes. So, 10 years ago it was an issue too. It is still an issue, we still have endemic rates of domestic and family violence and coercive control and, as I said, experience on the frontline but also speaking to victim survivors of domestic and family violence now it is clear that it is endemic. I am really happy to take it on notice to provide more detail.

**The CHAIR:** Thank you, Ms Foster, that would be great.

**Ms ROBYN PRESTON:** My questions are similar to Ms Mihailuk's. With the comments of Ms Foster's submission here in the opening paragraphs, you talk about the safety of women and the infringement perhaps of women's access to safe and affordable health care. I am just referring to that, and I note the reference to the link to the overseas details, but I am a really a big believer of collecting a lot of data which convinces me of an argument in a submission. I cannot see, I hear the fear and the comments and the perhaps, maybe there might be

a potential for problems here, but I cannot see convincingly where the data backs that fear up. But I acknowledge how you feel about it.

Also, going back to the previous submission, Dr O'Sullivan's comments on religious ethos can discriminate against women. You state, "It is important for the Committee to consider some historically sexist and patriarchal aspects of religious ethos." You talk about how there are certain areas in employment where women just have not progressed in leadership roles, particularly in the faith-based communities, in organisations there. I would suggest to you though that that comment is not alone. You have got legal professions and health professions where there is a dominance of males. To presume that having this sort of bill passed could lead to a worse situation for women in those opportunities in leadership roles, I cannot see the data that backs that up either. I cannot see that in your submission, so I am really keen to hear from each of you if you could make comment on that?

**Ms FOSTER:** Thank you, Ms Preston. Our concern is not, when we say we are concerned and we have fears, et cetera, and you say that we do not have the data that backs that up, that is because we have not put in place this law, it has not been tested, we have not seen what the implications are going to be. I think our concerns are that this bill, if put in law, would actually give somebody the entitlement to deny access to care and to tailor and adapt their services. That is where the fear comes from. Of course, it is going to be a fear or a concern at the moment, and there is not data to back what will actually happen when it is placed into law. That is why we rely on the legal experts around what it can and cannot permit in terms of denying care or in terms of tailoring care in accordance with religious faith or doctrine. I understand that there are criticisms that we have not necessarily backed up what will actually happen in terms of statistics. That would be yet to see, which we hope we do not see that. It has not actually happened yet.

**Ms ROBYN PRESTON:** Chair, if I might add to that?

**The CHAIR:** You have 30 seconds, Ms Preston.

**Ms ROBYN PRESTON:** I might let the others comment then.

**Dr O'SULLIVAN:** Thank you. Just in relation to the issue about women in religious institutions, I suppose, again I refer to the National Church Life Survey and their excellent annual reports, and while it is obvious, I suppose, looking at religious leaders at the macro level, even looking at the people who are going to be coming and already attending this inquiry, largely men, not entirely but largely men, the National Church Life Survey looked at local leadership in relation to men and women, which you would think would reflect a more substantial proportion of women. However, the most recent survey found that at a local level 22 per cent of local senior leaders were women and 78 per cent were still men—this is in 2016—and where the greatest representation actually of senior leaders was emerging was in the Pentecostal faiths, which is interesting in itself, because they are less hierarchical I suppose.

I do not think we should undervalue the substantial movements of women within the major faith communities. I know you are having a representative from the Muslim women's association later on in the hearing. But, it is also to acknowledge that in the major Christian faiths there have been and still are major attempts by women of faith within those religions to claim leadership and claim equality. There are actually various forms of feminine movements, for example within the Catholic Church, certainly with the Protestant churches. In fact, I could say one of the origins of feminism, the seed beds of feminism actually lie in liberal Protestantism in the late eighteenth and early nineteenth century, which saw women as having an equal role and a potential leadership role. I would like just to finish, to refer you to the Rape and Domestic Violence Services Australia submission, which has some very substantial comments on this.

**The CHAIR:** Dr O'Sullivan, we are at time. We were to ask Mr Singh if he would like to ask a question. He might like to allow you to continue. I am trying to manage our time.

**Dr O'SULLIVAN:** Yes, of course.

**Mr GURMESH SINGH:** I have a question. I will put it in writing. I am wary of the time.

**The CHAIR:** Dr O'Sullivan, we will move on.

**Mr JIHAD DIB:** Thank you very much for coming in. I appreciate the contribution you have made. My question picks up on something that you were speaking about a bit earlier Dr O'Sullivan, and it was around the issue of women of Islamic faith.

**Dr O'SULLIVAN:** Yes.

**Mr JIHAD DIB:** In your submission you talk about your concerns that this proposed legislation could in effect create more problems for women of Islamic faith. I thank you for referencing the Islamophobia report.

I have obviously been taking a keen interest in it for a long time. There are two parts to the question; firstly, how you came to that position of thinking; and secondly, which of the Islamic or the women's Islamic groups have you engaged with in terms of trying to get to that decision, and where they sit with this? As you have prefaced, we will be speaking to Hajji Maha fairly soon.

**Dr O'SULLIVAN:** Of course.

**Mr JIHAD DIB:** But obviously that is something I take a keen interest in, given the constituency around Lakemba. I do not know that I completely agree with it. I see the point that is being made, but I would like to know if you could elaborate a little bit more on that, in particular the engagement you have had with Muslim women?

**Dr O'SULLIVAN:** Thank you. The WEL has a broad spectrum of membership and we do have members who are women of faith who are active in their denominations. WEL has, I think, some members who are of Muslim heritage. WEL itself has not engaged directly with the Muslim women's association. We made those assessments in our submissions based on the research reports. Secondly, we did engage through the Pro-Choice Alliance last year with Maha—not myself directly but representatives of our organisation. We also talked with other women who represented Arabic-speaking communities and who were also prominent Arabic-speaking women in the media, for example.

I am looking forward to watching the testimony from Maha. I have read the submission quite carefully and I particularly noted the comments in relation to Islamic dress. Our empathy nevertheless is with those women, specifically in relation to the issues of dress, because we know that is a point of great sensitivity and also frequent, I might say, suffering for women who choose to adopt that mode of dress. They can experience some day-to-day hostility and indeed fear.

**The Hon. GREG DONNELLY:** Ms McDonald, just to clarify comments you made in a piece of testimony a bit earlier—and I forget who asked the question—I understood from your evidence that Women's Legal Service NSW believes that current exemptions in the New South Wales Anti-Discrimination Act with respect to religious schools and institutions should be removed from the legislation on the basis that, if those entities, organisations and bodies, receive public funding, they therefore ought not have exemptions. Is that the testimony you provided this morning?

**Ms McDONALD:** Yes, that is right.

**The Hon. GREG DONNELLY:** That has been a long-held and continued position of the organisation?

**Ms McDONALD:** Yes.

**The Hon. GREG DONNELLY:** Just moving on to a quite nuanced question, but it ties into the legislation in a practical way. I just need to lead into it. Does Women's Legal Service NSW support the participation of trans women in biological women's sports, either one-on-one competitions or in team competitions?

**Ms McDONALD:** I do not know that I have the relevant expertise to answer that question. I practice in the area of family law and discrimination. I do not know that I have had sufficient time to consider that question.

**The Hon. GREG DONNELLY:** I am asking you in your capacity as the representative here today representing Women's Legal Service NSW. That is what I understand you are here today doing.

**Ms McDONALD:** I do not believe that we have formed a position on that issue.

**The Hon. GREG DONNELLY:** You have not formed a position on that matter. That is what you are saying?

**Ms McDONALD:** We do not deal with matters of sport. We do not give advice on sport law, for example. I do not know that I am in a position to express a position about that today.

**The Hon. GREG DONNELLY:** Perhaps I need to move on. It is the same question then to Ms Foster. Once again it leads into a discussion around the legislation. With respect to Women's Safety NSW, does the organisation support the participation of trans women in women's sports—I am talking about biological women—either one-on-one or team sports?

**Ms FOSTER:** Look, Women's Safety NSW forms all of its positions based on extensive consultation with its membership as well as with victims and survivors of domestic and family violence. I am not able to formulate a position right now. However, in terms of the principle, what I can say is that our members will support and provide services to anyone who identifies as a woman or non-binary. Applying that principle, I imagine the

position—and again I would have to consult with my membership—would be that we would support anyone who identifies as a woman engaging in women's sport.

**The Hon. GREG DONNELLY:** Just to be clear, and I am not trying to be clever here, are you speculating—

**Ms JENNY LEONG:** Point of order: I understand we received submissions from a number of trans and gender diverse organisations. I am a strong advocate for us having those organisations appear as witnesses in this inquiry. In fact I believe that my position and others' position is to have people like The Gender Centre and parents of trans kids who made submissions to this inquiry appear as witnesses in this inquiry. I believe that Mr Donnelly is curious and wants to get the perspective of people from gender diverse and transgender communities.

**The CHAIR:** Ms Leong, if your point of order could be brief.

**The Hon. GREG DONNELLY:** This is a debating point.

**The CHAIR:** Excuse me, Mr Donnelly. Ms Leong, if you could be brief please.

**Ms JENNY LEONG:** I would suggest that Mr Donnelly might want to be supportive of my advocacy around us inviting those trans and gender diverse organisations to appear as witnesses so that they can have their views put on the record.

**The CHAIR:** Ms Leong, that was more a comment than a point of order. Mr Donnelly, you have 10 seconds. In fact, on that basis and to be fair to our witnesses and you as well, if I could as Chair, I will thank our witnesses today for their time and patience. You can see this is an issue in which the Committee has many questions of you. I thank you for the good spirit in which you have come with us on that journey today. Members will have the opportunity to send further questions to you in writing so you will have time to consider them. There are a couple of questions that you have already taken on notice. I just wanted to ask you in that spirit whether you are willing to receive further questions in writing.

**Dr O'SULLIVAN:** Yes, certainly.

**Ms FOSTER:** Yes.

**Ms McDONALD:** Yes.

**Mr ALEX GREENWICH:** Madam Chair, I have two one-word answer questions if that is—

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

**Mr ALEX GREENWICH:** You are not the Chair of this Committee, Mr Donnelly.

**The Hon. GREG DONNELLY:** Nor are you.

**The CHAIR:** Thank you members. We have closed the witness testimony session. You will have questions on notice. I thank you again for your time.

**(The witnesses withdrew.)**

**RATEB JNEID**, President, Australian Federation of Islamic Councils, before the Committee via videoconference, affirmed and examined

**BILAL RAUF**, Spokesperson and Advisor, Australian National Imams Council, affirmed and examined

**KEYSAR TRAD**, Chief Executive Officer, Australian Federation of Islamic Councils, affirmed and examined

**MAHA ABDO**, Chief Executive Officers, Muslim Women Australia, affirmed and examined

**The CHAIR:** Thank you very much for joining us today.

**Ms JENNY LEONG:** We have had submissions from many groups and organisations, and obviously while opinions may vary on this specific One Nation bill, almost all of the submissions agree that the protection of not enabling people to discriminate on the basis of religious belief or religious activity is lacking in our Anti-Discrimination Act in New South Wales. I am happy to hear from others, but Ms Abdo, you refer specifically to the gap that was pointed out in the Ruddock review around the fact that anti-discrimination laws render it unlawful to discriminate on the basis of a person's religious belief or activity, and that there is a gap in New South Wales law. Would you be supportive of the New South Wales Government inserting protection from religious discrimination as a protected attribute in the same way that all of the other protected attributes are included in the current Anti-Discrimination Act in New South Wales?

**Ms ABDO:** I think it is very important to start from an equal footing and right now we are not really starting from an equal footing. Muslims do not have that protection and we cannot argue about equality and debate equality unless we all have the same equal protection, and right now the Muslim community does not have that religious protection. There is no religious head to actually deal with that, so clearly we need religious protection for Muslims.

**Ms JENNY LEONG:** Just to clarify, what we have heard from some groups is that the way that this bill is drafted would create a hierarchy where protection for discrimination on the basis of religious beliefs would be given a higher status of protection and different types of protection to other forms of discrimination, for example for women and others. What I was trying to ask is whether your organisations would be supportive of inserting discrimination on the grounds of religious belief in the same way that those other attributes are done rather than in a different model, which this bill would suggest.

**Ms ABDO:** I am not a lawyer, so in regards to legal Acts I think Mr Rauf would be the one to answer that, but I can talk to you about the social impact that this will have on them. I think the question you are asking is very much related to the law and its application. Mr Rauf, would you—

**Mr RAUF:** Sure, yes. Can I just make a number of observations to that question? Firstly, I reiterate that there is certainly a fundamental absence of any protection on the ground of religion. I do not think there is much dispute about that.

**Ms JENNY LEONG:** I think we all agree on that.

**Mr RAUF:** The veiled woman at Wynyard station, if she is mistreated or unfavourably treated because of her Lebanese ethnicity, she is protected, but if they omit that and focus on her Muslim identity, which is very manifest, then she does not have any protection, including, I would say, under Federal legislation. I think we can all agree on that. But in terms of the current framework, certainly on our view, and having reviewed the bill, it does sit conformably with the current framework of the legislation.

There are two points to make in that regard: one is that it is not just a question of religion but the religious activity and in circumstances where the religious identity or the religious activity is more manifest, say, but then some other attributes have a greater effect in some cases, it is specifically picking that up. If the question is one of perhaps that particular proposed part adds additional things, that is a matter then of targeting particular provisions within that particular part as opposed to undermining the whole of it. We think that it fits conformably and would operate well.

**Mr TRAD:** I just wanted to say that the anomaly has been there for a very, very long time and many people have taken up action on the basis of vilification against them for their religious affiliation and they have failed just on that point. As Mr Rauf said, had it been on the basis of ethnicity then they would have succeeded because the comments are offensive, if they were done on the basis of ethnicity.

**Ms JENNY LEONG:** So just to that point, I guess the concern is that, particularly in relation to women, who are at risk of two different types of discrimination, if you like, on the grounds of being women or on the

grounds of their religious belief probably more, but I guess in that sense the concern being raised by some women's organisations has been that in some circumstances the hierarchy created by providing protections around religious beliefs could enable people to discriminate against women on other grounds and that that would cause concern. I am happy, given the short time frame, for that to be taken on notice, but it would be helpful to get a sense from all of your organisations, if this bill were not to succeed, whether you would be supportive of the New South Wales Government to act to simply insert or to take action while this inquiry is going on—nothing stops them doing that—to insert a protection around religious discrimination as per the other attributes in the bill. But I am aware the time is probably up.

**Mr RAUF:** If there is time I can very quickly indicate that again I think that is more a question of identifying the particular provision which you say presents the problem, and potentially refining or tweaking that as opposed to rejecting the whole thing and going down a path which is very different and, let us face it, in many decades has never happened and nor has there been any indication of it happening. So I would be very concerned that the work that has been done here now in respect of this bill be thrown to one side because of a few concerns relating to particular provisions and in its place we go back to something we had not been able to achieve in excess of 30 years, despite the glaring deficiency and need.

**Ms ABDO:** I think as well already there are no protections—

**The CHAIR:** Ms Abdo, I am just conscious of time. Ms Leong, would you be happy for those questions to be answered on notice by witnesses?

**Ms JENNY LEONG:** Yes.

**Mr PAUL LYNCH:** I would like to ask some questions about religious vilification, I think perhaps to Mr Rauf. We have had some evidence on this topic already. The arguments against it tend to be based on arguments about free speech on the one hand or, on the other, religion is something someone chooses, unlike their ethnicity. They seem to be the arguments against it. What would be your response to those arguments?

**Mr RAUF:** Three key points really. Firstly, that argument can be levelled at many of the other protected attributes—for instance, potentially carers' duties if you have a child. With respect, it is a nonsensical argument and it ignores a reality that in an environment of increasing white supremacist sentiment and clear evidence online and in public places of particularly women here being targeted, and these were particularly women such as Ms Abdo who, for instance, wear the veil, and she can give you numerous examples of the suffering, and recently there was the incident in Parramatta—let us face it—at the cafe. That woman was approached not because she happened to wear a Bulldogs jersey but because she had a hijab on. She was approached because of her Muslim identity, which was manifest, and yet that is not something that comes through in the charges nor everything else that has happened; it is sort of put to one side. So I think, with respect, that is not an argument that really travels very far when you look at the reality of what is being experienced.

As I say, going back to the example, vilification is not a foreign concept in the current Act. I mean, I can be homosexual and vilified and I have a protection, but if I am a Muslim and I am vilified or of a minority faith and I am vilified, I do not have the same protection. Unless there is some explanation for that anomaly, and I cannot think of any, why is it that certain attributes even have protection against vilification in the current legislation? Those provisions have been there for some time, yet we seem to be a little concerned about it in respect of religious identity and, to me, I think there is a real inconsistency in approach and analysis with how we are approaching these issues, and that is something which fundamentally impacts on women, as Ms Abdo will tell you.

**Ms ABDO:** Yes, I can speak on some of the social impacts on, for the last 40 years, Muslim women and their dress. We have had so many reports of a lot of the incidents impacting on Muslim women's ability to actually participate fully in society where we can see clearly that there is no protection against Muslim women who dress the way I dress. Whether it is walking down the street or whether it is in employment—I know there are protection rights in employment protection—but clearly what we are seeing is that Muslim women are the target and being targeted not because of your ethnic background but you are targeted because of the way you are dressed.

The way we are dressed is creating that sort of animosity by the other against Muslim women. It is the words, it is actions. We have had incidents where women have been spat on, women have been tripped while they are going up onto railway stations. Just down here, young women dressed in the Islamic dress walking down to universities have been not just spat at but have been literally tripped over. Where do you take that? What protections are there for Muslim women in that space?

**Mr PAUL LYNCH:** One of the other criticisms that is made of religious vilification laws is that they get close to the law of blasphemy. Do you think the way of dealing with that is to say the law should focus on attacks upon an individual rather than upon the philosophy of a religion?

**Mr RAUF:** Can I just again come back to the current legislative framework, section 20C in respect of race, which talks about conduct that incites hatred towards or serious contempt for or even severe ridicule of a person because of an attribute? Even using the formula that has been accepted and used in respect of many other attributes, that is something that can be readily applied and does not go anywhere near a concern about blasphemy because it is a pretty high bar. It is not just your insult, offend, in respect of a Federal provision but it is quite a high bar; it needs to incite hatred or serious contempt directly related to the religious identity. I do not think academic, for instance, comment or something like that would readily fall within existing exceptions anyway, but it would not come anywhere near what this provision protects against.

**Mr PAUL LYNCH:** And very quickly, I take it you would agree that the current provisions in 93Z of the Crimes Act are of absolutely no use in this context?

**Mr RAUF:** I think that the proof is in the pudding. They have never been used. As far as I am aware the Senate estimates have revealed there has never been any change. It was hailed as a very significant thing but nothing has come of it. In fact, most people do not even know about it.

**Dr JOE McGIRR:** I would just like to welcome the witnesses. I have a couple of specific issues that come out of, in particular, the submission from Ms Abdo in relation to Muslim Women of Australia but other panellists may wish to comment. Ms Abdo, you raised a couple of issues that I have ticked here. One relation to [audio malfunction] or dress in the workplace. I think you are raising a concern around customer interface and so on. There is another issue in relation to the definition of a commercial activity in a body related to a religious ethos organisation. Will you expand on those two issues that you have raised in relation to detailed elements in the bill?

**Ms ABDO:** Sure. Are we talking about the discrimination against, you know, women in employment? Is that the one you are referring to?

**Dr JOE McGIRR:** It seems to me you are raising an issue about communications in customer service requirements that are specified in the bill. I was wondering whether you felt that was too restrictive? What was your concern around that? I guess I am thinking about [audio malfunction] some Muslim women in respect of that.

**The CHAIR:** Dr McGirr, you are breaking up. We would love to see you, but if you took yourself off visual, that might assist in the short-term.

**Dr JOE McGIRR:** Okay. It is probably better if you don't. I may have misunderstood your submission, but I thought you were making a point. In the bill as proposed, there are some references to communications and customer service requirements for dress. I just felt that you were making a point that maybe that was too restrictive or should be removed or changed in some way. I want you to clarify that.

**Ms ABDO:** Sure. The most important thing we are talking about is the safety issue. Safety issue for Muslim women dress and in the way that, you know, if it is a safety issue then it is something to communicate with the employer and to be adapted according to the place of work. In relation, regarding the burqa as well and the communication spiral. Is that applicable or is not? So that is what we are really talking about, really more than just should anyone decide to discriminate against Muslim women for wearing the hijab just because you do not want to employ them, and there is no protection for them. So therefore is it about safety? Is it about security—no, not security, because there is no security in wearing your hijab. That is really what we are talking about in this particular statement that we are making.

It is the right for employers to really have a conversation and have a discussion with Muslim women about their code of dress and does it affect the way that they work. There are nurses who wear hijabs in hospitals and they are able to wear it in accordance to the code of dress in hospitals. There are doctors who are wearing hijabs. There are security guards wearing hijabs. There are police officers wearing hijabs. Really in a nutshell, it is about really taking this as a model that is applicable and that the hijab should not be something used to discriminate against Muslim women on that basis.

**Mr RAUF:** Mr McGirr, we make a similar submission and if I understand the concern, or the issue you raise, it is about what work those exclusions or those circumstances have to do. I think our concern, similar to what Ms Abdo has raised, one thing which has come through from the various congregations that the imams, the Australian National Imams Council work with, is a concern that for many women, particularly who wear the veil for instance, they may not be given job opportunities because there is a perception that that impacts upon productivity or customer engagement or customer service requirement. The concern which we expressed was that the fact is that subsection 6 (b) (i), in particular, and (ii) are very broad and they move away from the way in which courts have construed a lot of the exemptions, having regard to circumstances of a workplace.

Our position was that there was not a need to specify things such as customer service requirement, communication productivity because an employer could say in their subjective view that there is an impact on productivity and it makes it very hard objectively for a court to approach these things. There is existing jurisprudence which adequately deals with circumstances and what is reasonable and what is not, and accommodations and things like that.

**Mr TRAD:** The second part of your question about faith-based organisations that have a commercial activity. That part was not answered so I thought I would answer it. If a faith-based organisation has commercial activities on their faith premises, or adjoining their premises, they should have the ability to make sure that individuals who are working as paid staff in those activities are individuals that will not be in breach of their religious ethos because they are a faith-based organisation and that activity is part of that faith-based organisation. Being a faith-based organisation is not just about preaching inside a mosque or inside a church. Pretty much every faith-based community also has peripheral commercial activities to support their religious activities.

**Ms TANIA MIHAILUK:** I thank each of you for being here today. I also thank you for your outstanding submissions to the process too, in particular, in offering suggestions of how to improve the bill. I think that is very helpful. I will probably take up a lot of your time Mr Rauf, but will you elaborate the benefit that you see around the civil process?

**Mr RAUF:** At the moment what we have in respect of anything touching upon religion is criminal, 93Z. That has not worked and that goes through a very protracted long-winded process even if it is utilised. I think the idea of the civil process, one of the great advantages is that where, for instance, you have an issue of discrimination be it in the workplace, it provides a very effective mechanism to bring parties together with a third party and to agitate these issues and find a resolve. I do a lot of work in the discrimination area, and a lot of these matters do not get to arbitration because they resolve at the conciliation process with effective engagement. The issues are thrown up, they are talked about and whether there is a settlement, for existing employees for instance, there is a way through which addresses the issue raised.

So it is just a very effective mechanism to bring parties to the table, moderate the issue and try to find a pathway rather than relying on criminal provisions and police officers and enforcement and prosecution to pursue these things over months, if not years, if at all. So we are definitely in support of that. I think that has obviously been very effective in the context of the legislative regime and the other protected attributes, otherwise there would be question marks about it. But I think it is worthwhile.

**Ms TANIA MIHAILUK:** I want to touch on earlier comments about the idea that we could simply protect religion by adding it now to the Anti-Discrimination Act. You raised a very good point about religious activity. Would the panel like to elaborate on the importance of that religious activity and having that protected by law for those who practise the Islamic Muslim faith?

**Mr RAUF:** Yes. A common issue that does arise, for instance, particularly—and this is something we hear of frequently from people on factory or warehouse floors—is the accommodation for prayer, which is five minutes here or there. The irony is that there generally tends not to be resistance to ciggie breaks but for prayer breaks, because that tends to connote something more, or Friday congregational prayer, which is mandatory for males. It is optional for women to attend but for men it is mandatory and we encounter a lot of difficulties. We are constantly helping people to draft communications and letters to their employers or other entities to try to navigate these things. So that is an example which really comes into the scope of a religious activity rather than the fact of me just being a Muslim. It is inherently connected to it but it is something separate from the belief itself. So if we simply tack on religion there is a question as to, "Well, can I still pray on a Friday?" Obviously subject to other requirements, operational requirements, but arguably not unless there is some clear inclusion of religious activity.

**Ms TANIA MIHAILUK:** That is excellent. Thank you. Did anyone else want to add to that from the witnesses? Dr Jneid, did you want to add to that on the importance of religious activity? I do not know if he can hear us. Sorry, I am just trying to make sure everybody can be heard. That is all from me.

**Ms ROBYN PRESTON:** Thank you, Chair. And thank you for your contribution today. My question is to Ms Abdo. Picking up on Mr Trad's comments earlier, section 38 of your submission talks about the scenarios whereby a religious body may establish commercial activities—things like childcare centres, community halls, cafes. Looking at where you felt there was a gap with the bill and how it should be more inclusive of the boundaries outside of the religious place of worship, as such, because you have people that would flow through to the cafes, childcare centres and community halls of that faith, how do you see that being incorporated into the bill if it could be?



**Ms ABDO:** I can use my organisation as an example. We are a Muslim women organisation led by Muslim women delivering services to mainstream service users. People access our service knowing it is a Muslim women organisation and they will get the best service with the ethos of Islamic principles, which is about serving with a purpose and all of the above. So we are clearly in one part of our service we provide mainstream support, financial support, domestic violence support, homelessness support and accommodation to anyone that would like to access our service.

**Ms ROBYN PRESTON:** Would that be anyone apart from the religious group—

**Ms ABDO:** Yes, anyone. Anyone and everyone.

**Ms ROBYN PRESTON:** So you do not discriminate?

**Ms ABDO:** Our data clearly shows that our intake has been very much outside of just our Islamic faith. That is one part but there are other activities we do that will only attract Muslim women. It is on the basis of these are specifically designed for Muslim women only, so it is not open. And if anyone chooses to come in they come in knowing exactly this program is specifically designed for Muslim women only but it does not reject or not allow anyone else outside of that.

**Ms ROBYN PRESTON:** So they could participate?

**Ms ABDO:** They can participate. But they choose to participate. But if they come in and say, "Well, there is something in there that I feel very uncomfortable about," then it is already the feeling of being uncomfortable will be dealt with in a social issue outside of the religious, outside of the faith. It is not to debate the principles or the articles of faith itself but it is to look at how it is having an impact on them, in what issues, what are the social impacts, what are some of the things that have happened in their lives that could make them feel that way. So this is the business that we do. All I am saying is that when a business is specifically attached to a religious building or religious denomination—

**Ms ROBYN PRESTON:** Activity.

**Ms ABDO:** —then it is for that purpose. But if you are providing a service that can be accessible by others then it should be accessible by others. You should not discriminate against someone outside of that faith if they are accessing that service. But they choose to access that service knowing it is managed and run by that particular faith organisation. If it is a service that you are not happy with, it is not based on the actual faith; it is based on the service itself. So that is what we want—

**Ms ROBYN PRESTON:** The person can choose either to participate or move on.

**Ms ABDO:** Or not to participate, yes.

**Ms ROBYN PRESTON:** I invite the other witnesses to comment on that.

**Mr TRAD:** Sometimes somebody who is an adherent to the faith—or maybe they are not—they expect us at the faith-based organisation to be representatives of our faith tradition. They expect us to be behaving—for example, in our case, Muslims. Pretty much most of what we do or say will be seen by them as an example of our religious adherence and our religion itself. So in that sense it is important to make sure that our religious activities inside these places are protected and that if a person might feel that they have taken offence at something that we are doing inside our own place of worship or its peripheral commercial activities we should be protected.

**Ms ROBYN PRESTON:** You have no protection at the moment.

**Mr TRAD:** We need that protection in that setting because if somebody wants to find out—and maybe I can touch on Paul's earlier question. I do not mind people criticising my faith in an interfaith debate. In an intellectual debate, interfaith debate, you can question any part of my religious teachings or beliefs and I would like to be able to respond and question yours as well because it is a reciprocal process. I do not believe that in what is being proposed any of us wants to curb genuine freedoms of speech. What we want to make sure is that there is a protection that when somebody goes beyond what is a legitimate freedom into something that becomes, I suppose, unscientific, hurtful—gratuitously hurtful—rather than a genuine debate, that is an issue that needs to be addressed.

**Mr GURMESH SINGH:** My question is to Mr Rauf but I am happy to take answers from anybody after Mr Rauf has finished. You have said in your submission that the existing provisions of the Anti-Discrimination Act provide protections to other religions and you have mentioned the Jewish and Sikh faiths, but that they do not extend to the Muslim faith. Do you know or do you have a legal reason for that or is there other cultural reasons?

**Mr RAUF:** No.

**Mr GURMESH SINGH:** Are you able to expand on that?

**Mr RAUF:** They are clearly set out in decisions of the tribunal, which has applied these laws and very clearly stated circumstances where the laws have extended to certain groups. So, for instance, the Jewish group on the basis of the ethnoreligious. There was then the case involving Channel 9 where the tribunal found that the relevant conduct did amount to vilification, if you like, but because religion itself was not a protected ground there was nothing you could do. And similarly there were other decisions of the tribunal which are publicly accessible which have similarly found in respect of other ethnic groups such as Sikh community et cetera. There are always questions as to the boundaries of those but at least some level of protection has been found within the existing legislative regime. Whereas I think the clear and unanimous position in respect of Muslims—and perhaps other minority faith communities—is that they are not caught by ethnoreligious because there is no ethnic aspect uniting all of those people.

**Mr GURMESH SINGH:** And just the part B to that question—

**Mr RAUF:** Sorry, what was the part B?

**Mr GURMESH SINGH:** Do you feel that this bill plugs those holes that you see in the existing Anti-Discrimination Act?

**Mr RAUF:** Well, it does because it really very clearly picks up religion, religious belief, religious activity so whether you are a Sikh or a Muslim there can be no doubt that you would be protected by it. Presently if you can establish some ethnic aspect to it then you might still get some protection—Muslims cannot—but this bill does because it picks up religious activity, religious belief. So the benefit of that flows to all of the minority faith communities who presently do not have any protection either at State or Federal law. Many of the States have already moved on like Victoria, for instance, but New South Wales lags seriously behind.

**Mr TRAD:** Based on the Administrative Decisions Tribunal decisions that Mr Rauf has mentioned before, regardless of the second reading speech regarding what ethnoreligious was intended to cover, they have made it clear that it does not cover religion unless there is a race element to it. Some arguments have been made that in certain countries, certain religions are synonymous with race. For example, in Germany Turkish and Muslim are interchangeable terms. For a long time in Australia Lebanese or Middle Eastern and Muslim were interchangeable terms. Most people in the general public could not differentiate between them. Although that was the case, the tribunal still found that there is no protection strictly on the basis of religion. For example, people could get away with calling people of a particular faith "vermin" and it is not actionable. Imagine calling an entire minority of half a million people or more, according to the last census, vermin. "Vermin infesting Australia's shores"—rapists, pillagers, security risk—all these terms were used with gay abandon.

**Mr GURMESH SINGH:** You mention ethnoreligious. A lot of minority religions, including my own Sikh faith, have some of these issues sometimes as well around how you define what is cultural and what is religious. Do you think that this bill will potentially open the door for fringe groups to misuse religion for what is potentially a cultural practice?

**Ms ABDO:** When having that conversation, we need to have the protection first and we need to trial that. We cannot really have a conversation around protection when I know that I am not protected. The definition of ethnoreligious discrimination was meant to include Muslims but it never has. As Mr Rauf has alluded to, it has never been trialled and it has never been proven. I would say that Parliament's role is to protect its citizens, so I would like to feel safe enough through that bill so that we can have that conversation and start from an equal footing. Because right now, there is no equal basis for what we are really talking about. As we have seen over many years, Muslim women have been abused for their religious identification but it has never been proven in court that it is for that reason. Especially in the Parramatta incident, where clearly that was the reason but it was turned into something totally different.

I am not a lawyer but I fully hear and echo the concerns of Muslim women around New South Wales and Australia. We start having those debates—and we want to have a healthy conversation about inclusive rights, but when I have no protection whatsoever I have no way of realising what it is like to feel protected so that I can have that really healthy, informed conversation where we will start tackling those issues that you are raising. But right now, for me as a Muslim woman who has been working in this space and supporting other Muslim women for nearly 40 years, I say that we need to start that equal footing in protection.

**Mr TRAD:** I find that generally cultural questions are related to ethnicity. The moment that you start talking about a culture, most of the time you are talking about a culture that is specific to a particular racial background. Religion is something else. Religion can span many different cultures and many different ethnicities. I do not think there is much danger of the two issues being conflated, in that people who might introduce cultural practices that may be abhorrent to some will just seek protections on those bases. We take it as a given that you

cannot introduce something that is contrary to law and expect to be protected just because of a culture. I think that there are enough cases on that, with very minor exceptions. So I do not believe that giving religious protections would open the door for people claiming certain cultural practices under those protections. They already have that under ethnic protections.

I believe that, generally, we all know that laws become convoluted because they are given a number of exemptions, and certain issues are kept out et cetera. As it stands, as I read it, the bill is talking about religions that—and I do not have the exact wording in front of me—have a structure and a group that you can ask, "Is this a religious practice or not?" With respect to culture, that is a different aspect altogether. I do not think that the bill is looking to protect cultures but it is looking to protect religions, and the two are quite distinct.

**Mr RAUF:** I understand your question to be: Can religious identity be used as a basis to introduce certain cultural practices? I think that there is little risk of that, because again there is the jurisprudence that underpins the concept or notion of what constitutes a religion. Helpfully, the present definition of religious activity also excludes or carves out any activity that would constitute an offence punishable by imprisonment et cetera, whether under the laws of the State or the Commonwealth. If there was a concern that, for instance, a group might utilise the laws to introduce some objectionable practice, I think that would likely be picked up by the carve-out. But in any event, we do not see that there is any real risk of that because the tenets and principles relating to religion are pretty clear. Generally, despite the ethnicities and the cultural differences, the religious principles spanning across those are quite consistent and uniform.

**Mr JIHAD DIB:** As-salamu alaykum, everyone. Thanks for being here. It is really wonderful to see. I am going to do a bit of a fan moment here. Hajji Maha, thank you for everything that you have done over 40 years. I know that people will not believe it but I was once a child, and I remember you running lessons for people.

**Ms ABDO:** You were.

**Mr JIHAD DIB:** I still behave like a child. I am the father of a couple of young Muslim girls who look up to you with enormous respect for the courage that you have provided in being one of the pioneers of wearing a hijab proudly. Thank you so much for that, and I am pleased to see that you are in my electorate as well. Of course, Mr Trad and Mr Rauf, thank you for your representation. I have a question about the establishment of the organisations that you represent. Mr Rauf, could you provide numbers around and a summary of the Australian National Imams Council and its representation and an acceptance that it is reflective of Muslim views?

**Mr RAUF:** The Australian National Imams Council has been around for some years now. It is comprised of some 200 plus imams or religious clerics across the country. They each have their respective congregations drawn from the community. That has given us unprecedented access to a lot of grassroots views and the views of the people, because they engage with their religious cleric usually on a daily basis in congregations or individually with respect to religious and other matters. That is fed back through to the council. The various imams are also drawn from a diversity of different ethnic backgrounds—Indonesian, Pakistani, Lebanese et cetera. So there is a wide spectrum. We are very confident that a lot of what we have said in our submission is reflective of a lot of the views that have come through those 20-odd imams because we shared the draft with all of them to get their imprimatur. They obviously then liaise with their congregations across the country and, as you will see, it is something that we have shared with a lot of the other organisations operating within the community as well.

**Mr JIHAD DIB:** Yes, we saw that in the schedule that you have attached. Just for clarity, an imam effectively has their own mosque or place of worship.

**Mr RAUF:** Yes, they are the equivalent of a priest or they have their own congregation in the mosque that the community attend for prayers, marriages and things like that. So there is a constant engagement at that ground level and that is what we draw from.

**Mr JIHAD DIB:** Terrific, thank you for that. Mr Trad and Dr Jneid, I know you are a national body and have been around for ages. In one minute, if you would not mind, could you just explain how the structure of it works and how it also attracts to the grassroots, and why the things you say are representative of what the community would be feeling?

**Mr TRAD:** The Australian Federation of Islamic Councils was established in 1964. It is a 56-year-old organisation and its membership is made up of State councils and member societies. Those societies might operate mosques, Islamic centres or a variety of activities for the Muslim community. Many of our societies employ imams and they run mosques themselves. We also directly run a mosque in Zetland, just around the corner. Our membership is Muslims from all over Australia and it is a tiered structure. We work through our member societies and reach to the grassroots through those member societies. In the recent past we have extended our activities to reach ordinary Muslims, not just member societies that run mosques. We are, in effect, a pioneer of mainstream

Islamic activities all around Australia, and we have been very active in helping establish many of the Muslim organisations around the country.

**Mr JIHAD DIB:** Thank you, Mr Trad.

**Mr TRAD:** And schools. We established 10 schools around Australia as well.

**Mr JIHAD DIB:** I am conscious that I am running out of time. Just quickly, not even about your organisation—this is the next one because we will hear a lot about this through the course of deliberations. We have heard about the impact, particularly on Muslim women and you have spoken a lot about the impact on Muslim women. Questions have been put about this legislation and the impact of it. With your 40 years of experience, you know the impact that vilification and discrimination has had on Muslim women. If you could think of a couple of examples off the top of your head and wrap it up with the idea of whether the bill address some of the concerns of the Muslim community.

**Ms ABDO:** I want to make it very clear that culture and ethnicity is already covered; religion is not covered. It is from that premise. Over the past 40 years we have moved through so much—from the first Gulf War to the Bosnian war, and so many incidents in Australia and globally. That has really hit hard on Muslim women. I have personally been a victim as well of clear discrimination, vilification and abuse. Now that we have the Islamophobia register, that is registering clearly what is happening and what women can do about it.

But the onus continues to be on Muslim women to say, "Well, hang on, what have I done? Am I being paranoid? Have I been doing this?" The incidences that have been happening have been escalating to a level that now we are saying that women do not want to publicly talk about it anymore because we do not want any more copycats. And white supremacists, now we are seeing on that other side are having that effect on increasing racism and discrimination. For 40 years we have been working in the space of domestic violence and homelessness with Muslim women, utilising faith as a tool for empowerment, where we can actually differentiate between cultural practices and religious practices.

I think that is the point that a lot of people do not see. While there are over how many hundreds of ethnic groups under the banner of Islam and women are part of society itself, there are certain cultural practices that we as Muslim women in Australia now provide the platform for awareness to create understanding about the difference between religious and cultural practices. While we do that, I would like to see that we feel that there is protection outside of that circle. If I start talking about some of the incidences that have happened over the years, I think you have all seen and heard over the many years.

But, most importantly, it is the feeling when you wake up in the morning knowing an incidence has happened overseas that could really impact on you and your children. That is what I would like you to take home with you—the fact that you wake up in the morning and you go out there freely. The majority of Muslim women watch the news and know, and give each of their children certain tools to use internally to build resilience, calm down and not respond. When you have a young man in the playground, you tell him, "If you get abused, just calm down mate. Do not say anything."

**Mr RAUF:** Can I quickly add one point? I think to answer your question as well, the bill does go a significant way in terms of addressing the issue. It is also symbolic: it is a recognition that religion or religious identity matters and it ought to be protected. As I think all of the submissions made on behalf of the Australian Muslim community point out, the one issue where we say that there still are deficiencies in respect of vilification—and that is readily remedied by, for instance, something similar to section 20C.

**The Hon. GREG DONNELLY:** Thank you all for coming along today, it is great to have you here to provide us with an opportunity to ask you some questions. I direct this question to all of you but it leads off from something Mr Trad said in answer to one of the earlier questions about religion not just being the issue of practice and worship inside your mosque, church, synagogue or temple. We are talking about religious freedom. It is beyond that. It is that but, importantly, it also includes that one can live out their religious belief faithfully in their day-to-day life. So it is a holistic idea about what a religion is. I was wondering if I have understood essentially what is being said there and, if I have not, correct me. But if that is the position, just reaffirm that.

**Mr RAUF:** I think you fairly reflected that religious identity is a very fundamental aspect of the lives and identity of many people. Yes, I wear many hats; yes, Ms Abdo and Mr Trad wear many hats. But one thing that is very visible or plain, again, particularly with women—the most vulnerable of the groups—is their religious identity. It is something so inherent to who they are and how they live their lives. In that context it becomes very important to acknowledge that, firstly, because at the moment it is not acknowledged as such an important attribute. There is no acknowledgement. That is why I say the bill gives a symbolic recognition that for Ms Abdo, as a female Australian Muslim woman, her religion matters just as much as her gender. In fact, many women already carry the limitations and disadvantages relating to gender but this is significantly compounded for women

who also have a religious identity. So it is very symbolic and very important. You are certainly right in reflecting that it is a holistic aspect.

**Ms ABDO:** Can I add to that?

**The Hon. GREG DONNELLY:** Please do.

**Ms ABDO:** Just to follow-up from what Mr Rauf was saying, faith is in the heart; it is a way of life and it is an inclusive way of living. Specifically for Muslim women, to feel comfortable and protected enough to express their own faith creates that sense of belonging, trust, acknowledgement—all those attributes will make your family feel a lot stronger and better in the way that they do. On that basis we take faith as a tool for empowerment, to empower people of faith in the way that they practise their life in their daily life, the way that they work with other people and interact with society and every creation that has been created in the best way possible. The way I see this is a starting point to know that, you know, religious freedom is part of that whole protection model—the framework—where Muslim women feel there is protection there. It is not something that we would be using but I think it is something that gives life back to the hearts of those that have been literally just surviving at the moment.

**Mr TRAD:** When we talk about faith observance there are some things that are obligatory and some things that are optional. Speaking from my own perspective and from a lot of people I talk to that if we are not able to perform something that we considered to be obligatory, then we start to feel anxious about it. We start to feel really bad. Our day transforms from what might have been a nice day to the opposite. It is those obligatory practices that we need to feel protected and that it is safe for us to perform these practices. These obligatory practices are all within the law. There is nothing in those practices that is in breach of any of the laws we have whether they are at the State level or at the Commonwealth level. So we need those protections. We need to be able to feel safe and secure when we perform these obligatory aspects of our religion and our children need to feel that same level of protection.

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

**The Hon. SCOTT FARLOW:** Thank you very much. With respect, we have heard during this Committee from many stakeholders that the protections that exist for ethno-religious groups in the Anti-Discrimination Act could just be expanded to cover all of religion and that that would be sufficient. What is your view on that? Would expanding that definition be sufficient for protection?

**Mr RAUF:** I think that in some ways it has similarity to what Ms Leong suggested in terms of whether we add the ground of religion. There are two immediate difficulties which come to my mind. One is that there is a body of law that is built up around what ethno-religious means so there is a question as to, well, how does one deal with that jurisprudence? The courts have expounded upon that concept and in a way that obviously presently does not include religion. So, what it would really amount to is striking out the ethno, which would cause grief to some other groups who have the benefit of it, and ought to, and need it. So I think where we end up is back in the space of, well, do we just tack on another ground of religion? That has some of the limitations or challenges which I have already adverted to; for instance, how does it extend to religious activity? How does it work within the existing framework, and so forth?

**The Hon. SCOTT FARLOW:** I want to seek your comment on two aspects of the bill as well. How important do you think the protections that are outlined in 22M are in terms of Islamic organisations in the broader community? Is that something you have a view on?

**Mr RAUF:** Yes. Look, that is a key or critical protection. I say that because a place where very often issues of discrimination come through, to us at least, is in the workplace, is on the factory front, is in the shopfront, is in the pharmacy where there is very little recourse. Can I say this: One of the things or one of the rejoinders—

**The Hon. SCOTT FARLOW:** I am sorry, I am asking about 22M, not 22N.

**Mr RAUF:** Sorry, my mistake. I misheard. So, in terms of the religious ethos organisation, 22M is important because as both Mr Trad and Ms Abdo have mentioned, there are organisations out there which are very active and which are clearly religious in their nature, in how they operate and the services they provide. They are geared towards providing welfare or other services to the Muslim community. They are not charitable organisations but they operate to assist the Muslim community and so we think that it would be of importance to provide a level of protection to them as well so that they can continue to do a lot of that. They presently do but it is a question, I suppose, of really reflecting that and ensuring that that is reflected in the legislation.

**The Hon. SCOTT FARLOW:** I also want to seek your views in respect to the operation of 22Z of the proposed bill and whether you thought that that provided adequate protections or if that particular part of the bill was necessary?

**Mr RAUF:** Yes. I do not think we have too much concern about that particular provision. I think, as we understand it, that is really ensuring that religion or religious identity does not become a factor in terms of the determination of, you know, grants or other such schemes, et cetera. We can see the need for it and it is really then a question of how it is applied. But we did not have any particular issue with that provision.

**The Hon. SCOTT FARLOW:** The last question from me is that the Jewish Board of Deputies made a recommendation that, effectively, there will be a provision inserted for a brand ambassador effectively allowing for the contracting out of some provisions of the bill. I just want to see your perspective on that ability to effectively contract yourself out in certain positions from the provisions of the bill?

**Mr RAUF:** Sorry, could I just ask you if you could say by way of example? I am just trying to understand it in a practical sense.

**The Hon. SCOTT FARLOW:** Effectively, to capture the Israel Folau case is probably how it is boiled down best. In an area like that you could contract into a position whereby you said that she would not have any opinion or make any public pronouncements. I just wonder if you would support a similar provision like that?

**Mr RAUF:** Yes. Look, I think we do because while there is a balance and there are legitimate issues which need to be ventilated, I think a situation like that I can see the force of where someone does assume a public position like that and that there needs to be a level of responsibility attached to it as there is reward and remuneration. I do not comment specifically on the Israel Folau circumstances because to our mind the question more is one of: How does it impact or offend upon other groups? If it does have the effect of victimising or discriminating in an adverse way against them, that is something that there would need to be some balancing of, particularly for people in those public positions. Again the Channel 9 situation was another one where a person with a national audience was able to get up and express some very disparaging views of Muslims and effectively nothing happened. That would be another example where there ought to be some level of responsibility and concern as to the effect of what is said.

**Mr ALEX GREENWICH:** Thank you all very much for appearing before us today and for sharing the stories of discrimination and vilification. It is so important to give a voice to that. I share a concern with your submission, Mr Rauf, around 22M, just to continue that conversation.

**Mr RAUF:** Yes. I will make sure I do it correctly this time.

**Mr ALEX GREENWICH:** The way in which it could empower a religious ethos organisation to discriminate on the grounds of a person's religion. Could you give an example as to how you could see that playing out, and remedies to that part of the legislation?

**Mr RAUF:** Yes. Just to pick up the example of some of the services that Ms Abdo can add further detail to, but her organisation provides with respect to assisting particularly Australian Muslim women and their needs whether that be in the form of commercial or other sort of activities but ensuring that there is the ability to do that without it being impacted by other limitations. Perhaps, if I could ask, Ms Abdo?

**Ms ABDO:** Yes. I think here it is about, you know, having equal rights, right? As an organisation that provides services, like I said earlier, to people, people that access our service know they are accessing Muslim Women Australia. We used to be Muslim Women Association. We are really in Lakemba and we are expanding Australia-wide. Our service has been really proven that it is very ethical, very professional and it is in line with the national action plan, the national framework, and it does not really undermine any of the work that we do with other organisations in the sector that I work with in homelessness and domestic violence. Our team is very multicultural and a very multi-faith team made up from women of all faiths and all cultures. What brings us together is the fact that we are, like I said earlier, providing a service where faith is a tool for empowerment. We are utilising people's individual faith.

What we are finding is that a lot of women and men are saying, "Wow, I can be empowered through my faith." It does not mean it is a black and white response. It is about looking at what are some of the issues that are relevant to this particular faith. People that have come and accessed the services now see their faith in a totally different light. They see that working in this organisation, while we have a lot of other issues, when we are working together we say together we are better. That is our motto. Last year we had our dinner and promoted it as Together we are Better. Ambassadors for our Muslim Women in Australia Linking Hearts, for which Mr Dib is an ambassador, Graham Richardson is also an ambassador and the head of Medibank is an ambassador.

It is an ambassador program run by Muslim women that includes people of faith and no faith. We have lots of religious leaders as well in that program. So whether it is an employment, whether it is an activity, I believe wholeheartedly that we as people with a purpose can create a safe, inclusive environment, where there has to be that equal playing field where we are protected, not me personally but my identity is protected because I am at the

intersection of many things, not just a woman of faith. But my faith carries me and the way I am perceived is because I wear this particular piece of cloth on my head therefore I belong to this particular faith.

But I can speak on many issues. We need to have that playing field and we can and, as an example, we are working together, we have worked together and we will continue to provide the best ethical service to those that access. It is not one size fits all, right? It is the framework, it is the process and it has to be measurable, it has to be accountable, so all of those things we all do it in all of our places of work.

**Mr ALEX GREENWICH:** Just going to the concerns around 22M, just comment in the time we have left. In protecting religious belief as an attribute and protecting against vilification, you would all agree that we would not want a piece of legislation to facilitate or to protect someone to claim to be a religious ethos organisation, then actually discriminate against someone on the basis of their religion?

**Mr RAUF:** In our submission we raise the caveat that the operation or the approach of that particular organisation, where it does discriminate, it needs to be related back to the tenets or the principles of the religion per se and not just some broad brushed approach but in a very direct way. In our experience certainly with Islamic schools by way of example—and that is the example we give in our submission—that is something which has been in practice whereby for example there are Islamic schools that have principles or chairpersons of boards that are non-Muslims and teachers that are non-Muslims so there would be a school that, for instance, then says we will only employ people of a certain faith. There should not be some broad brushed approach but it needs to be measured or related back to what is the relevance of that to religious principle practice et cetera. So we certainly do not promote this broad idea and we do confine it back to the religious principles.

**The CHAIR:** Thank you very much. We are actually out of time. We have Dr Jneid as well. I am conscious of time. We need to give fair time to witnesses and to our members here. We are also running a little bit behind schedule. My proposal, if you thought it was fair, was to give you five minutes perhaps to make your views known on questions you have not had a chance. There may be further questions on notice, also, to our witnesses. I hope you will be agreeable to that. You could see we could go on for much longer and I apologise for that but we do have to try and get on schedule. Dr Jneid, you have five minutes. I will give you a little indication when we are getting close. Thank you.

**Dr JNEID:** No problem. It is not going to take a couple of minutes. What I want to add to the statement is we are equal in paying taxes and we should receive equal protection. Also I believe that the bill, if passed, will cover an unintended gap in anti-discrimination law in New South Wales. [Audio malfunction] need this bill to be passed in order to protect us and allow us to safeguard our faith teaching from being undermined. The Australian Constitution protects freedom of religion. This proposed bill will help bring the New South Wales Anti-Discrimination Act in line with the Australian Constitution. That is all that I wanted to say. Thank you.

**The CHAIR:** Thank you very much. So that concludes the hearings for today. I wanted to thank you very much. There will be questions on notice that will be put to you out of session. Again, thank you for your patience, for your calm and respectful approach and for your submissions.

**Mr RAUF:** I am just wondering if we have got 30 seconds for me to say one thing which I have not been able to note.

**The CHAIR:** No, I am afraid we have to keep to time. I have closed proceedings so that we can keep on track. I would encourage you if there is something that you would like to add by way of being offline, an email, we would of course consider that. I thank you again very much.

**Mr RAUF:** Thank you.

**(The witnesses withdrew.)**

**(Short adjournment)**

**BHANTE AKALIKO BHIKKHU**, Director, Buddhist Council of NSW, and Spiritual Adviser, Rainbodhi LGBTQIA+ Buddhist Community, affirmed and examined

**DR PETER STUART**, Bishop, Anglican Diocese of Newcastle, sworn and examined

**ELISE CHRISTIAN**, Advocacy Task Force Spokesperson, Equal Voices, sworn and affirmed

**The CHAIR:** Good afternoon to our witnesses today. We will turn to questions now.

**Mr PAUL LYNCH:** Really just one quick question to Dr Stuart. One of the recommendations by the Ruddock Review was the abolition of the offence of blasphemy. Do you have a view on that?

**Dr STUART:** I think in a secular society as we are structured we have to be careful about criminal charges, such as blasphemy, which in the course of free debate have in times past been overused. I am comfortable personally that there is not a charge of blasphemy provided the other restrictions are in place.

**Dr JOE McGIRR:** Good afternoon. I welcome and thank all the witnesses for coming. My question is to Ms Christian. In your submission you make a statement on page 3, and you refer in section ii to:

The general removal of protections from harmful discrimination in employment in religious bodies being unreasonable and unjustified.

Could you explain what you mean by the "general removal of protections from harmful discrimination" in this Act?

**Ms CHRISTIAN:** Yes. Just let me find my place. I think it is talking about the extension of exceptions, or really the tendency of this bill to give religious ethos organisations even greater immunity and impunity by removing protections for ordinary people of faith or people of no faith, in comparison with the protections given the institutions.

**Dr JOE McGIRR:** Can you point to the general tendency? You say there is a general tendency in the bill to give them more protections. Can you elaborate on that? You have referred here to the "general removal of protections". It is clearly an important issue. Can you clarify that a little bit further?

**Ms CHRISTIAN:** Yes. I think the concern that is felt by members of Equal Voices is that the bill seems to be wanting to institute a quite novel approach in terms of human rights that would give protections to institutions, religious ethos based institutions. The concern of our members is that as ordinary grassroots people of faith, Christians and people of other faiths are already in a position of less power than, especially the major historically influential religious ethos institutions. We are concerned that anything that would take us in the direction of further shielding the institutions and their leadership from any critique or any challenges to abuse of power, given their record.

**Dr JOE McGIRR:** Are you referring to section 22M?

**Ms CHRISTIAN:** I am afraid I do not have the entire text of the bill in front of me.

**Dr JOE McGIRR:** Section 22M refers to religious ethos organisations being taken not to discriminate—

**The CHAIR:** Dr McGirr, we are handing Ms Christian a copy of the bill.

**Ms CHRISTIAN:** Thank you. Yes, that is the section, or one of them in question, yes. I have it in front of me now. If you could repeat your question, Dr McGirr?

**Dr JOE McGIRR:** It seems to me that section allows a religious education for people of its own beliefs and employment, it does not seem to me to remove a whole range of protections in the anti-discrimination, Fair Work Act and other legislation that they also have to comply with.

**Ms CHRISTIAN:** No. The legislation as written does not specifically remove them, but its tendency is then to increase the power imbalance between the institution and the individual person of faith. Because our members have been at the receiving end of a lot of abuse, mistreatment and just disempowerment and exclusion, we are very concerned that any legislation that seeks to protect people of faith, seeks to protect the actual people of faith, not the institutions with entrenched power already.

**Dr JOE McGIRR:** I do not want to see people harmed either in that way. I just wanted to clarify your view and what you have written there. I think you have clarified it for me, thank you very much.

**Ms TANIA MIHAILUK:** I am going to direct my questions to the Buddhist Council. I want to touch base a little bit with the Buddhist Council. I was looking at your website and you have people and organisations



who become members of the council. Is the Buddhist Council, would you say, the chief organisation that represents the vast majority of Buddhists in New South Wales?

**Bhante AKĀLIKO:** That is right. I would call it the peak body in New South Wales, and they represent over 100 different member organisations. They liaise with Government on issues like COVID, for example. They represent members, they facilitate chaplaincy and special religious education training and they are members of the Federal level of organisation which represents all Buddhist councils in Australia.

**Ms TANIA MIHAILUK:** Does it represent each individual temple, or are they run very separately from the Buddhist Council?

**Bhante AKĀLIKO:** Yes, so it is diffuse, yes.

**Ms TANIA MIHAILUK:** In my area, for example, I have five temples that are not members of the Buddhist Council, but I have a Meta Centre that is.

**Bhante AKĀLIKO:** That is right.

**Ms TANIA MIHAILUK:** The one centre that is a member of the Buddhist Council but I have five temples that are not. I just wanted you to clarify that.

**Bhante AKĀLIKO:** Sure.

**Ms TANIA MIHAILUK:** Also the Mingyue Temple, a very large temple in Bonnyrigg, is that a member?

**Bhante AKĀLIKO:** I am not sure. In fact I do not know all of the organisations. I will tell you something though, Buddhists tend to be one of the less organised, organised religions.

**Ms TANIA MIHAILUK:** I do not know, I think mine could come up and match yours.

**The CHAIR:** Bhante, if you could speak directly into the microphone please.

**Bhante AKĀLIKO:** Membership, of course, is not compulsory and many, because of the diversity of organisations, Buddhist organisations in New South Wales represent people from many different cultural backgrounds, many different language backgrounds. Those organisations, some of them would not even know about the Buddhist Council, I would say.

**Ms TANIA MIHAILUK:** Absolutely. No, it is understandable. I have been to a number of temples and I can understand that they would work—

**Bhante AKĀLIKO:** Quite differently.

**Ms TANIA MIHAILUK:** —in their own communities and cultures and so forth and the way that they practice their faith.

**Bhante AKĀLIKO:** But the board of the Buddhist Council, on which I sit, represents a diversity of traditions and language groups. So it is something good to know.

**Ms TANIA MIHAILUK:** I want to make a comparison, and not to suggest that we should, but in the context that we had the Imams council provide us with a submission that was signed by a very large number of their member organisations that agreed with their particular submission. I note with yours, and it is not an issue, but has this just been a submission that was dealt with at the council executive level perhaps, rather than across those centres?

**Bhante AKĀLIKO:** That is right. And people were invited to participate, there was a call for feedback. It went out through the Australian Sangha Association, which is the peak national body and went out through the Buddhist Council networks and went out through—

**Ms TANIA MIHAILUK:** But again, it went through the networks of people who are members, is that right?

**Bhante AKĀLIKO:** That is right. And went out through a variety of other networks, like social media and things like that in our list and so on.

**Ms TANIA MIHAILUK:** The only reason I say that is that perhaps it may not have been something that was brought to the attention of some of these temples, for example, that have very large congregations of observers and Buddhist practitioners. Perhaps it was not brought to their attention, given that they are not directly members of the Buddhist Council of NSW.

**Bhante AKĀLIKO:** And they are, of course, welcome to make their own submission.

**Ms TANIA MIHAILUK:** Right, but they were not invited as part of this particular submission. I am just clarifying that sort of level of representation because of my understanding of the way that temples work. As you say, they are quite diffused and very separate organisations and—

**Bhante AKĀLIKO:** Yes, it can be quite independent.

**Ms TANIA MIHAILUK:** Yes, very independent. Because I have a very large congregation of people that are following the Buddhist faith, whether the Vietnamese community or the Chinese community, and I think the vast majority of the temples may not necessarily be members of the Buddhist Council. Would you accept that?

**Bhante AKĀLIKO:** I don't know, I am afraid. But I know that the board definitely has a diversity of views.

**Ms TANIA MIHAILUK:** Well, you have just accepted that five of my temples, for example, in Bankstown, which have thousands of people, are not members. I mean, I have checked. They are not members of the Buddhist Council. I have had a good look at some of the Cabramatta temples. I cannot see any evidence that they are members necessarily of the Buddhist Council.

**Bhante AKĀLIKO:** I would stress to this Committee the importance of understanding minority religions in New South Wales and the lack of resources, the language barriers and other difficulties. We do not have a phalanx of lawyers assisting us with our work. We are small. We are 2.8 per cent of the population. We are spread across many different traditions. If you have access to those people, I hope you encourage them to apply a submission because I cannot contact all these people myself. Our committee cannot contact all those people.

**Ms TANIA MIHAILUK:** I understand, Bhante. It is no disrespect intended, because I can understand that.

**Bhante AKĀLIKO:** But the word did go out through the networks that we have. Those other people are more than welcome to make a submission.

**Ms TANIA MIHAILUK:** We appreciate it.

**Ms ROBYN PRESTON:** I am just further following that train of thought and questioning for Bhante Akaliko. In point 5 of your submission, you say that there is an unfair impact on minority faiths. Throughout your submission you talk about the lack of influence or ability to be able to do that in comparison to the bigger churches and religious groups. You say that you are concerned that members of minority faiths will face discrimination in employment and challenges in accessing services, resulting in disadvantage. Can you elaborate on that? Are you implying that there is no discrimination at the moment but that, if this bill is brought in, you would be discriminated against? Why is that the case?

**Bhante AKĀLIKO:** I think that there probably is discrimination at the moment, but this would embolden discrimination because it would entrench the ability for people to discriminate. Any discrimination that happens now would be done in a very underhand, perhaps slightly embarrassed way. I believe that, if this bill was passed, then it would be emboldened and entrenched. The difficulty I see for religious ethos organisations that work as a business model, charity, hospital or school is having the ability to discriminate on the basis of religion means that many of our members who belong to these diverse communities, who work in hospitals or schools, will need to access employment services because the Buddhist culture and organisations here are so small we simply do not have those resources to offer charities, hospitals or schools of our own. Our members regularly access those services and employment. If this bill were to happen and people were to be able to refuse people of other faiths to work, our members would be disadvantaged.

**Ms ROBYN PRESTON:** Would the other witnesses like to elaborate on that?

**Dr STUART:** I think one of the risks of the bill is that it preferences the status quo. The status quo moves towards the dominant religious groups that exist here in Australia today. I represent one of those. Our church has been here since colonisation. In a sense, the bill actually presents an advantage to us in terms of being a religious ethos organisation that is engaged in a number of places. The concern is that preferencing of groups like mine, we do not think that is the correct way to go. Rather than presuming trust or in a sense demanding trust, we actually need to operate in the marketplace of ideas and activities and gain trust. There is a reason why that trust has been diminished. I suppose that the bill goes towards trying to address a complicated set of circumstances in Australia, which is that religious people do experience discrimination and, especially in other countries, experience great religious discrimination. It is about trying to strike the fine balance in this. My own view is that the bill errs on the side of preferencing the status quo as opposed to ensuring that contested matters remain contested.

**Ms CHRISTIAN:** I would just like to add that I am in complete agreement with what both the other witnesses said. As someone who has had a long connection with the Anglican church and especially with Anglicare, which I guess is a charitable arm, I would be very concerned at the impact on people of minority faiths, who disproportionately are on the front line of aged care, health care and disability support. That is the field I work in and I have seen it. If those workers were to be exposed to inappropriate proselytising and denigration of their religion in their workplace, that would be a very poor outcome in my view.

**Mr JIHAD DIB:** My question is a little bit technical. Dr Stuart, you are the Archbishop for Newcastle?

**Dr STUART:** The bishop. The Bishop of the Diocese of Newcastle.

**Mr JIHAD DIB:** How does your submission work across the entire State? Is this a submission that is reflective of an Anglican view across the State or for Newcastle itself? Is it for the area that you represent?

**Dr STUART:** The Anglican Church of Australia has 23 separate dioceses. In New South Wales there are seven and I am the bishop of one of those, which is the diocese of Newcastle. Another diocese is the diocese of Sydney where Glenn Davies is the Archbishop. Clearly there is a difference in view between the archdiocese of Sydney and the diocese of Newcastle, which we both represent in our submissions.

**Mr JIHAD DIB:** Thanks for clarifying. I was just not sure how that specifically worked. Bhante Akaliko, I was really interested when you were talking about support that can be provided and about how your organisation does not have much support in terms of being, say, organised and so forth. Is there any way that this sort of legislation could assist that? Or do you just feel that that is a different point completely? Do you see any benefit in this legislation towards the Buddhist community?

**Bhante AKĀLIKO:** When I think about the Buddhist community, I am thinking about citizen Buddhists who are out there working in aged care, hospitals, schools and things like that. I cannot see how this bill will help them in that sense. I cannot see how it will help Buddhist culture flourish more in any way. The fact is that we are small and 2.8 per cent of the population. That is 210,000 people. We are not a large organisation. We do not have the historic advantages of real estate holdings, hospital or business models, charity models and so I cannot see how this will advantage Buddhists. I think, as my venerable doctor friend said, that we will only see the status quo being maintained.

**Mr JIHAD DIB:** Can you think of any situations where somebody who falls within the Buddhist faith has come to the council or has been a victim of some form of discrimination or victimisation in some way? Were there any situations where you wished that there was or could have been some protection, whether that is vilification or discrimination?

**Bhante AKĀLIKO:** I think, actually, the kind of discrimination that Buddhists usually experience is kind of bland, bureaucratic and quite boring discrimination in that the cultural milieu in which we exist favours the dominant well-established religions. The things that affect us, as with other minority religions, are often seemingly trivial. For example, I remember being told that, if I were to go to work as a chaplain in a Christian hospital, I should be encouraged to remove my robes. This is one of the things that the bill goes to about religious dress so this is something that I can think of. But if it was in a religious hospital, then that would affect me.

**Mr JIHAD DIB:** You might not have been spending your time reading through all the transcripts, but we have covered that issue around the robes. It has come up now in a range of different topics and is an area where we need to ensure that it does not get to a point where somebody is restricted if they have to dress in a particular way or a particular way of their faith and it is not stopping them from their work. Because the greater good, in my opinion, is the fact that they are providing some form of counselling service or some form of chaplaincy.

**Bhante AKĀLIKO:** However, it is at the discretion of the employer and that is the issue because it is not consistent.

**Mr JIHAD DIB:** And maybe then that is something that we look at.

**Bhante AKĀLIKO:** It is not consistent. It is not consistent.

**Mr JIHAD DIB:** But the notion that you would be asked to remove your clothing, that particular form of clothing, the commonsense rule applies—that unless it is actually interfering with your work, I cannot really see why it happens.

**Bhante AKĀLIKO:** Yes.

**Mr JIHAD DIB:** We heard earlier from people of the Islamic faith.

**Bhante AKĀLIKO:** However, can I say—

**Mr JIHAD DIB:** I think my time is almost up. Ms Christian, I want to thank you for coming in. I know that you are based around a really multicultural area. There is an important element of faith in that particular part of Sydney. Would vilification be one of the issues? Can you see an improvement in terms of vilification or an addition to creating a sense where people cannot be vilified because of their faith?

**Ms CHRISTIAN:** I think that is an important area that definitely any change to the legislation needs to address, but it needs to address it in a way that equally protects people of all faiths. At the moment we have issues where if someone is a member of an ethno-religious faith, they are covered, they are protected, and there are gaps for people whose faith backgrounds is not linked tightly to their ethnicity. I would certainly like to see that ironed out so that there is fairness across the board for people of all faiths. I think particularly living where I live, in south-west Sydney, there is a big issue with the gap in protections for Muslim people against religious vilification. It is a live issue and it is an issue that I know my friends deal with daily. Yes, I think that that needs to be addressed. I think that it needs to be done in a way that ensures fairness, not in a way that is skewed towards the concentration of power in the hands of majority religions.

**Mr JIHAD DIB:** Thank you so much, Ms Christian, and thank you, Dr Stuart, and Bhante Akāliko Bhikkhu.

**The Hon. GREG DONNELLY:** I will commence with Dr Stuart. In answering Jihad Dib's question about the number of dioceses in New South Wales, I think you said there are seven Anglican dioceses.

**Dr STUART:** Yes.

**The Hon. GREG DONNELLY:** And you are the bishop of the Newcastle diocese. How many Anglicans are there in your diocese, approximately?

**Dr STUART:** I would not be able to answer that. I do not know. About a million, I think.

**The Hon. GREG DONNELLY:** A million?

**Ms TANIA MIHAILUK:** A million?

**Dr STUART:** Well, it depends on whether you take the census number.

**The Hon. GREG DONNELLY:** No. I am asking you, as the Anglican Bishop of Newcastle—

**Dr STUART:** How many people?

**The Hon. GREG DONNELLY:** Surely you must know the number of Anglicans in your diocese.

**Dr STUART:** Are we talking about those who identify in the census or those who attend church?

**The Hon. GREG DONNELLY:** Both.

**Dr STUART:** I do not know the number of census Anglicans off the top of my head.

**The Hon. GREG DONNELLY:** We can check it with the Australian Bureau of Statistics.

**Dr STUART:** Okay.<sup>1</sup>

**The Hon. GREG DONNELLY:** What about the number that practise?

**Dr STUART:** Around 5,000.

**The Hon. GREG DONNELLY:** About 5,000. When you define them as practising, that is that they attend?

**Dr STUART:** Attend church about once a month.

**The Hon. GREG DONNELLY:** Thank you for that. Can I ask you this question that relates to this inquiry but ties back to the current provisions of the New South Wales Anti-Discrimination Act that in the current Act there are specific exemptions. I am sure you would be aware of this.

**Dr STUART:** Yes.

**The Hon. GREG DONNELLY:** There are specific exemptions for faith-based schools.

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<sup>1</sup> Dr Stuart provided further evidence to the Committee by email dated 16 November 2020 that in "the 2016 census for the region covered by the Diocese had a population of 1,044,296 of whom 240,780 indicated an affiliation with the Anglican Church of Australia."

that currently exist in the New South Wales Anti-Discrimination Act should be retained in that legislation, or in fact removed from that legislation?

**Dr STUART:** In relation to schools, on the whole I would be comfortable with them being diminished somewhat. I think if I remember correctly the legislation talks about not offending the religious susceptibilities of adherents of religion. I think there is so much contest around what actually would offend the religious susceptibilities of people of a particular religion. So, in my diocese, of the 5,000 people who attend church and the many others who call themselves Anglican, for example, on some issues the split would be 60-40 or 75-25, depending upon the particular issue. So how we define susceptibilities, and therefore how we recruit, causes some tension in the space.

**The Hon. GREG DONNELLY:** Just to touch on that, my question was quite specific about whether you would support their removal. You did not say that you supported their removal. I think you are saying something more nuanced. You support their diminution.

**Dr STUART:** That is right.

**The Hon. GREG DONNELLY:** So that is the proposition that you are putting as the Bishop of Newcastle. The Newcastle Anglican Schools Corporation of course runs the Anglican schools in the diocese of Newcastle. Is this a matter that you have discussed with them, the diminution of the exemption provisions in the New South Wales Anti-Discrimination Act?

**Dr STUART:** So, for example, the ethos statement of the Newcastle Anglican Schools Corporation talks about inclusivity. I have not spoken to them specifically about the question because the question is not in front of us. We are not the parliamentarians; you are.

**The Hon. GREG DONNELLY:** No, no. You misunderstood what I said. I actually asked you explicitly have you spoken to—

**Dr STUART:** I have not put this proposal to the Newcastle Anglican Schools Corporation board.

**The Hon. GREG DONNELLY:** Right. If I understand you correctly, the position then with respect to the diminution of the efficacy of the existing exemption provisions in the New South Wales Anti-Discrimination Act is essentially your own personal view. Is that correct? You do not speak behalf of the Newcastle Anglican Schools Corporation?

**Dr STUART:** Well, I do when I speak here, yes I do, because I am the public and representative spokesperson of that organisation.

**The Hon. GREG DONNELLY:** Right.

**Dr STUART:** We put a whole range of matters in front of them but if you ask have I specifically put that, no. Do I understand the direction of the Newcastle Anglican Schools Corporation and what we are seeking to do in our schools, yes.

**The Hon. GREG DONNELLY:** Well, just to be clear about this, the Newcastle Anglican Schools Corporation is the entity which runs the Anglican schools in the Newcastle diocese.

**Dr STUART:** Yes.

**Ms JENNY LEONG:** Point of order: I believe that Mr Donnelly has put the question a number of times. He potentially has not got the answer he was wishing for and continues to keep putting the same question. Given the limited time I am just not sure how useful or constructive that is.

**The CHAIR:** Thank you, Ms Leong.

**The Hon. GREG DONNELLY:** To the point of order: It is none of your business because they are my questions, not yours. But that is not the point.

**Ms JENNY LEONG:** Sorry, Chair. Could you ask Mr Donnelly to repeat what he just said so that all members can hear?

**The CHAIR:** Mr Donnelly, please proceed. I want to hear what your point of order is.

**The Hon. GREG DONNELLY:** My point of order is that Ms Leong does not tell me how to ask my questions. I formulate my questions, as I am entitled to do, and put them to the witnesses.

**The CHAIR:** Okay. Mr Donnelly, I am allowing you to continue with the questioning, so I am ruling it in, but I would caution you to get to the point soon because in fact you have 30 seconds remaining.

**The Hon. GREG DONNELLY:** That is fine.

**The CHAIR:** I should just say that if the witnesses want to take this on notice or you do not want to answer, that is completely your decision to make. We have 30 seconds.

**The Hon. GREG DONNELLY:** Sure. Just to clarify—

**The Hon. SCOTT FARLOW:** I am happy to forgo not my time but for Mr Donnelly to finish his question and answer.

**The CHAIR:** You are forgoing your time in doing that.

**The Hon. SCOTT FARLOW:** The time that I have to begin with, but not all of my time. It is just enough for him to get an answer.

**The Hon. GREG DONNELLY:** Thank you. I appreciate that from the Hon. Scott Farlow.

**The CHAIR:** Thirty seconds and then at Mr Farlow's forbearance.

**The Hon. SCOTT FARLOW:** A little.

**The Hon. GREG DONNELLY:** That is fine. I am very grateful to the honourable member. Sorry, just to clarify finally, with respect to this issue about the diminution of the application of the current exemptions in the Anti-Discrimination Act with respect to their application in the Anglican schools in the dioceses that are run by the Newcastle Anglican Schools Corporation, you do not seek to speak for them specifically on that point but your view is, as the bishop, that those provisions should be diminished.

**Dr STUART:** I think I have answered the question.

**The Hon. SCOTT FARLOW:** Do you believe that there should be a protection for religious freedom within the New South Wales Anti-Discrimination Act?

**Dr STUART:** My submission was to that effect. Yes, I do.

**The Hon. SCOTT FARLOW:** Sorry, I found your submission somewhat confusing in that I know there was some support for it but there was also quite a lot of criticism of this bill. Also the position of religious discrimination actually existing in Australia, I think, was one of the points that your submission made as well. With respect to that, how would you like to see religious discrimination enshrined in the New South Wales anti-discrimination legislation?

**Dr STUART:** I think, as I said in one of my earlier answers, I think the bill goes some way towards addressing that and I think it is around fine-tuning the bill as opposed to starting again from scratch. I do not know how other aspects of legislation goes, but, for example, if someone is being asked to respond to a matter under this bill they are defined as the "perpetrator" as opposed, say, as the "respondent" to a matter. The bill uses language that actually sets up at a tone of how the engagement around this will go.

I think clause 3 of the bill takes us to preferencing the religious dimension above some other dimensions that might exist in terms of a hearing on a discrimination matter. So I think there is a way of actually saying to any board or body that is hearing this that all matters of discrimination shall be considered equally by the particular deciding body as opposed to preferencing the religious view. I think those two things would go some way towards it. Religious ethos organisations do carry the views of their members and their representatives speak on their behalf, as I do on behalf of the diocese of Newcastle, and there is a possibility in our society that religious organisations might be required by law to do some things which causes offence to those religious bodies and we need a mechanism to be able to articulate our concerns.

I suppose my concern is I think there is a preferencing of religious ethos organisations. Finally, I think my concern is around the capacity for people who hold religious beliefs to have been seen to do harm—not just physical harm but in words—and my reading of the bill is that it allows immense freedom for people to be able to say things, which are not at the level of vilification—and I know we are working on the level of technicalities here in terms of what is defined as vilification and what is not—but short of vilification, the words and actions of people still actually have a significant impact. So in my view it is a nuancing of the bill and not a removal of the bill.

**The Hon. SCOTT FARLOW:** So from your perspective the bill is a start, but there are certain issues that you would like to see addressed, which you just outlined then. Just on that freedom of speech—let's call it—element within the bill and the ability to outline a religious view that may cause offence but may not be vilification, could you give an example of something that you see would fall into that category?



**Dr STUART:** I think, what I hear from gay and lesbian Christians is that some of the commentary in the public domain about what it is to be a gay and lesbian person—they feel entirely diminished by the commentary—probably does not meet the threshold of vilification but causes a consistent sense of being isolated or turned into a minority within the community. That would be an example that gay and lesbian people raise with me on a regular basis.

**The Hon. SCOTT FARLOW:** What about certain elements such as actually citing a biblical verse that may have certain teachings that may construe a certain view along those lines, for instance? Let us go to the Israel Folau case, for instance, and stating a biblical passage. Do you think that is something that should be afforded protection or not?

**Dr STUART:** Well, I suppose the problem with that is that people often cite texts or traditions as if the citing of them closes the discussion. I think the texts that are sometimes cited as being definitive are not regarded within my Anglican tradition as definitive. We have a 30-plus-year debate going on in Anglican communion worldwide around these issues in terms of whether we have settled on particular things. We have got to balance the right to speak with the impact of speech, and I see this bill as trying to answer those questions and actually going, "Well, here is how it is going to be done." I have looked at the United Kingdom legislation where it actually says that the tribunals will actually attend to these matters when they occur. I think this bill actually tries to conclude arguments as opposed to setting up the framework for the arguments.

**Mr ALEX GREENWICH:** Can all of you outline your concerns about the bill for the LGBTI community and also any concerns you may have about how the bill may disrupt the important work you all do to bring people of faith and the LGBTI community together? Perhaps we will start with the representative from Equal Voices.

**Ms CHRISTIAN:** We have very serious concerns about the direction the bill would take the experiences of our members. Our members are active members of their faith community; most across the Christian tradition. We are closely involved with our faith communities; it is a really important part for us of who we are. In many cases we have experienced either direct abuse of some kind or just experiences of exclusion and vilification or speech that is harmful, and those experiences are what has driven our desire to see safeguards for people of faith in New South Wales enacted. We want our members to be able to live out our religious convictions without experiencing harm in the very places that we seek acceptance and safety.

Our participation in our faith communities takes a number of forms, but one of its central aspects is a commitment to work constantly to challenge the actions of institutional leadership, where those actions are self-serving and exclusionary, and to continue to push for checks and balances to the concentration of power in the hierarchies, especially of the larger and more hierarchical denominations. We want to see freedom for people of all branches of Christianity and of all religious faiths to participate in our faith communities and practices freely and safely. In the Royal Commission into Institutional Responses to Child Sexual Abuse we have seen what happens when there is a culture of impunity for the leadership and there is no transparency, and we are very concerned that if this bill takes things in that direction by the privileges it extends to religious ethos institutions that we will be less protected from the negative experiences we already have and less able to worship and participate freely and safely with genuine sense of belonging.

**Mr ALEX GREENWICH:** Dr Stuart?

**Dr STUART:** I thought I would leave it to Bhante.

**Bhante AKĀLIKO:** I keep on thinking, and I hope the Committee also thinks, about the situation where you are working in an office or studying at school with people who, outside of those hours, are able to make harmful statements about people and then the difficulty of having to come back to the school or the workplace the next day having heard those words. The hours of work are fixed and limited but the way that we receive information today is not, and there is no opportunity for those harmful words to be curtailed. They are public, they are available, they go across the school gate and they go across the work entrance. The disharmony and the lack of social cohesion that will result from that I think will harm LGBTQIA+ people immensely.

**Dr STUART:** I recall vividly a conversation from a young person through one of our schools who was a gay person, who said to me, "It would have been much more helpful for me to have seen in my schooling a gay person in the teaching role welcomed within the school life as opposed to having to conduct themselves in a less open way and for them to have a sense of the Anglican church welcoming that person for who they were as a gay person who prays, as a gay person who participates." So the modelling and representation to them was, "You are not welcome and we will actually use the powers that exist", that Mr Donnelly identified before, "Actually, we would prefer you not to be part of our staff or part of our community."

So rather than going to the heart of the religious teachings of the Christian faith, which is love your neighbour as yourself as you love God, there is a whole different way of engaging and so people who are different or experiencing difference or coming to some self-understanding feel pushed to the side. So that person's expression of if there had been a teacher like this, if there had been a culture like this, their own journey as a young person would have been profoundly helped.

Where does this bill go? The risk of this bill, as in all forms, is to continue to enshrine the capacity to discriminate; religious organisations often seek that. So I come as a leader of a religious organisation, who can see the advantage in some parts of what we do, but respectfully suggesting that it probably provides an empowerment to me as a religious organisation, as a religious leader, that might actually not do what people are wanting in terms of building a cohesive society and preserving the wellbeing of all people. But, as I have said before, I think the bill is trying to do something that is important, that recognises that religious people should not be discriminated against, but there is a balance of the discriminations that we need and I am not sure the parliaments or the institutions are the right place to do it. I am saddened about the judicial or the tribunal system being the places being able to do that, because they, sadly for people, are an experience of hurt themselves when you have to make your case and then be responded to, but they probably are the better place than in the legislation.

**The Hon. MARK LATHAM:** Thank you to the members of the panel. Just to come to this question of balance—and I note that the Bishop opposed the Porter bill in Canberra as well—invariably to do any religious discrimination provision in a Federal or a State statute there needs to be a balancing against the clash of rights, the clash of identities, and the most prominent is the point that is in Ms Christian's submission about intersectionality, religious belief and sexuality, and the Corboy case in Victoria bears that out; it was a contentious matter and a split court decision. What this bill tries to do to get the balance is to go to the Siracusa Principles that are set out in section 3. With this clash of rights, identities colliding, what else could be done other than to use this proven human rights instrument to set out the circumstances and proportionality under which religious rights and freedoms could potentially be extinguished? So if you do not like section 3, what is the alternative here? Otherwise, from what I am hearing, you are basically saying that if gay rights are to triumph over religious rights you can never do a bill like this.

**Dr STUART:** I think I have expressed previously my concern around section 3 where I think it does give preference to the religious rights over the other—

**The Hon. MARK LATHAM:** But how does it do that? It is a proportionality test that goes to being prescribed by law, responding to pressing public or social need, a legitimate aim, and using no more restrictive means than are required. What else can we possibly do to get the balance right to avoid a Corboy case in New South Wales being litigated through various courts?

**Dr STUART:** If you were to assign to the tribunal the responsibility of weighing all the contested matters. I think it is section 3 (3) of your proposed bill that gives preference to section 1.

**The Hon. MARK LATHAM:** But you understand that the Siracusa Principles are assigned to the tribunal.

**Dr STUART:** Yes, I do.

**The Hon. MARK LATHAM:** So what is the problem with them?

**Dr STUART:** I think I have articulated the concern that it preferences religious—

**The Hon. MARK LATHAM:** How does it do that? It is one thing to say and it is another to explain how it does that.

**Dr STUART:** I am afraid off the top of my head I am not able to answer that in the way that I would hope to, but I am happy to try and respond to the question afterwards and articulate in writing to you. It is a fair question.

**The Hon. MARK LATHAM:** Ms Christian, I very much enjoyed your submission and I am heartened to hear you are from south-west Sydney—God's own country. This question of intersectionality, how do you look at the Siracusa Principles, which, I suppose coincidentally, are a quasi-legal conceptualisation of that principle in identity politics?

**Ms CHRISTIAN:** I am not a lawyer, I do not have legal training, but I guess the answer I would give would come out of my personal experiences where the question of balance of these different rights and aspects of identity is something that our members deal with on the ground every day. I can give you an example. For example, there is a case study in our submission of a child in a Christian school who, when he reached the age where he became aware of his sexuality, suddenly found his entire experience of his school community and his faith



community just turned upside down. It was extremely distressing. He made multiple attempts at self-harm on campus as a result of the way that the school privileged the rights of both other students and, I am sorry to say, of staff to treat him in ways that dehumanised him. The school became a very unsafe environment. There was no attempt to understand his experience or to support him and, in fact, he had to leave the school and leave behind his entire community and network. His parent also had to leave the school where they were employed at the same time because he would not have survived.

That is just one of many, many examples where the current situation is that the power is disproportionately in the hands of these well-resourced and established Christian institutions as against the vulnerable individuals, often children, who need support more than ever at this time where they become aware of their sexuality or gender identity. My concern, and the concern of our members, is that the way this bill is framed will actually make that situation worse rather than better. Instead, in an ideal world what I would love to see, and what we support, is the notion of a charter of rights so that this can be addressed comprehensively and not in a piecemeal kind of ad hoc way that ends up really entrenching the status quo and even worsening the situation.

**The Hon. MARK LATHAM:** Just to finish by pointing out the current Act for 43 years has not included non-government schools and religious charities within the coverage of the Act, and my bill just extends that 43-year tradition. So it is not adding to anything really.

**Ms CHRISTIAN:** I am not saying that it is novel in that respect, I am just saying that these are the experiences that our members and their families have consistently and our concern is that any legislation that is designed to protect people of faith, which I fully support and we fully support, does not do so at the expense of those members of our faith communities who are particularly vulnerable.

**The Hon. MARK LATHAM:** That is why we wrote in the Siracusa Principles. We have been acutely aware of this and it is a genuine attempt to get it right. So what else can you do?

**Ms JENNY LEONG:** One of the things that has come out in each of your presentations today and in your submissions, I think, is the tension between the idea that human rights' principles are exactly that: they are there to protect humans. But the extension of this bill to attempt to provide what would be protections against discrimination and almost human rights protection to religious ethos organisations is, I think, at the nub of some of the concerns that have been raised. The Hon. Mark Latham, a member of One Nation, has just outlined as the proponent of this One Nation bill, the Siracusa Principles. They are indeed principles for how you interpret human rights, based on human-to-human interaction, if you like, and protecting human rights within an organisational and societal framework.

Given the discrepancy in views within the Anglican diocese but also within the various Buddhist communities and organisations and indeed with individuals within large hierarchical faith organisations, one thing that has not been touched on, and I would invite you all to comment briefly, is the challenge at the point where someone from, maybe, a minority faith or a minority viewpoint within that larger organisational structure, is discriminated against based on their religious belief by a religious ethos organisation, and how that would play out in the context of this bill and experiences that might have around that. I am happy to take it in whichever order you prefer.

**Bhante AKĀLIKO:** So, I imagine that there would be a variety of views on many issues and a variety of doctrinal views. Buddhism does not have a central hierarchical mechanism. So many people would have different views. And then I suppose if it came to a crisis point it would be those people who have most power, most control who would decide what is or what is not an offensive thing. I see a danger actually for other religious groups as well that the minority views, or divergent views, will be trumped by whatever, perhaps conservative or more powerful and influential view prevails. Both views are not necessarily indicative of their community. It seems a shame that we will end up with perhaps a very small amount of people who have power, influence or control deciding just what it means to have a religious view.

I think that will entrench certain approaches to issues such as LGBTQIA+ people. I think there is a tendency to move away from religious moralising in our society. There is no appetite for more. I noticed with the panel review into the Federal bill that they recommended removing things like pregnancy as an exemption, race, disability as an exemption. It seems to me that there is a movement away from overt religious moralising and where those intersect with social, educational, workplace areas. So I think there is a variety of views. The difficulty with the way it seems to work with this bill is that someone will get to decide what is offensive; someone will get to a decision what is a religious view and those other voices may not be heard. I think it is very murky and I think it will cause a lot of trouble within organisations but also in society as well.

**Ms JENNY LEONG:** Dr Stuart do you want to comment?

**Dr STUART:** Yes, very briefly. There are gay and lesbian Anglicans and their allies who speak to me say how they find some of the stances of the Anglican Church as such, that they might need to leave what they regard as a spiritual home and participate in another church which is more accepting and more embracing of them. At one level that is a human right and an opportunity but they struggle with how they might have voice within the Anglican Church and how they might be allowed a place to express themselves as they perceive God has called them to be. They raise that with me on a relatively regular basis.

**Ms CHRISTIAN:** Yes, that is exactly why Equal Voices exists. We are there to support and to advocate for and to represent those Christians who have no choice but to deal with these intersections. It is very difficult when you have very strongly worded and exclusionary views coming from particular factions of the current religious leadership in your organisation. It is extremely difficult to be on the receiving end of messages like, "Go away. We don't want you", or messages like, "You need to be fixed." For one example, my Anglican Church Diocese of Sydney is currently in the process of adopting a policy that in its draft form is requiring any parish worker to counsel a trans-parishioner to de-transition.

All the medical and psychological evidence says this is extremely harmful. People in parish work at the grassroots are horrified at the thought that they are going to get a directive from HQ to tell their parishioners whom they care for and love that God wants them to de-transition. Freedom of conscience is a really, really important principle in the Christian faith and when you have a leadership that seeks to speak for God in areas where it is actually very ill-informed on the lived experience of trans people or of LGBTIQ people of any shape, it is just not something that we want to see encouraged by what you pointed out, of assigning what is, in fact, a human right to an institution. Human rights are for humans.

**Ms JENNY LEONG:** Thank you so much. I think it is really powerful to have that testimony on the record. Thank you for all that you do to advocate it and for all of you for giving that response. I appreciate it is not easy.

**The CHAIR:** We are now into free time. Do any members have questions?

**Ms TANIA MIHAILUK:** Ms Christian, I want to clarify the document to which you referred.

**Ms CHRISTIAN:** Anglican Church Diocese of Sydney. It is currently kind of, it is a little bit suspended because it did not meet—

**Ms TANIA MIHAILUK:** Is it a draft document or an official document?

**Ms CHRISTIAN:** My understanding is that it was partially passed at the 2019 synod but the part that directly addressed the pastoral care of trans people, and the advice to de-transition was returned to the Committee for further work.

**Ms TANIA MIHAILUK:** It is not actually an official direction from that diocese in any way?

**Ms CHRISTIAN:** It was presented.

**Ms TANIA MIHAILUK:** I am sorry, we need to clarify that because that is a statement you have made.

**Ms CHRISTIAN:** What has been passed is a statement on gender identity that you can find in the public domain. You can find it on the SDS website.

**Ms TANIA MIHAILUK:** Are you saying they are making a direction for people that they have to—

**Ms CHRISTIAN:** And those pastoral care guidelines, at the close of the synod last year were returned to the committee for work. We still have not seen what the committee has come out with.

**Ms TANIA MIHAILUK:** So it is not finalised what they are directing—

**Ms CHRISTIAN:** But concerns were raised by many pastoral workers at the synod and so we are hopeful that the committee will consider those concerns, but we have not yet seen what they are going to come back with next year.

**Ms TANIA MIHAILUK:** A motion was passed but there was no other subsequent direction that you are aware of at this stage?

**Ms CHRISTIAN:** A statement on gender identity was passed, yes.

**Ms TANIA MIHAILUK:** Yes, I am more concerned about the other direction to which you were referring.

**Ms CHRISTIAN:** The directions are still in process but the statement clearly outlines a view that de-legitimises the experience and the existence of trans-Christians. It is still of major concern.

**Ms TANIA MIHAILUK:** There will have been a lot of religions that have made statements like that but I am more concerned about that direction to which you are referring. So at this stage that has been parked.

**Ms CHRISTIAN:** I will take the rest on notice if you would like that submitted.

**Ms TANIA MIHAILUK:** Yes, that would be great. You have said they made a direction so I just want to see that particular direction to which you are referring.

**Ms JENNY LEONG:** Point of order—

**The CHAIR:** Thank you, Ms Christian. You have taken a question on notice. Do we have any other questions?

**The Hon. MARK LATHAM:** If I could, to Bhante Akālika. The comment you made earlier about the treatment of workers who are well away from the workplace at night on Facebook say things that can be deemed to be offensive or harmful. If employers get in the habit of just sacking those people are we not opening up a new form of repression in society against a basic labour rights issue that people have a life away from the workplace? It is not feudalism, it is not serfdom where the employers own the worker 24/7. In the case of Israel Folau and this whole argument about the status quo and privilege, Folau grew up in the Minto public housing estate which is as low in our society that you can get. I saw that community find religion to give them purpose and keep their young kids off the streets and off drugs and do a lot better than other public housing estates in Campbelltown. That is why I have always supported his right to express religion because I saw the good it did.

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

**The Hon. MARK LATHAM:** Why are these things so bad to the point where we need the right of employers to sack people for what they say away from the workplace?

**Bhante AKĀLIKO:** I have not suggested that anyone should be sacked. I think that what we are looking at is the harm that is done. We believe that words have consequences, that words can have effects on people, and the kinds of statements that you are describing make people feel smaller than others, lesser than others. You are worried about Israel's position in society. We are talking about groups that have been historically marginalised, hassled, bullied, spat on, abused—and emboldened often by religious sentiment. Those words have consequences. They are real and they hurt.

These people grow up feeling like they do not belong, like they are not valued, that they are not worth it, that they are somehow put into a pigeonhole where their small sexuality defines them as a person. Buddhists take a much larger picture. We see that people are much broader than their sexuality, much broader than their actions, much broader than their ethnicity or those other things but that they are responsible for the words that they say—they should be weighed carefully; they should not harm others—that we should exercise religious freedom with compassion. We should use it as a shield, not as a weapon. We should use it to protect ourselves, making sure that we can practise, but not use it in a way that harms others.

**The Hon. MARK LATHAM:** Would you accept that Folau's statement was one of redemption and from his point of view a statement of Christian love for his fellow citizen? Can you see things from his point of view?

**Bhante AKĀLIKO:** I can see things from his point of view. I think that those kinds of statements are very challenging to get the balance right. People pointed out his role as a community leader and his importance for being a role model. I think that if we are encouraging people to make statements like that that are known to cause harm, that do not represent a multiplicity of views, that do not include the ability for people to respond—but it is very one-sided and makes people feel like they are put into a box then I cannot see why he would have wanted to make that view known in that way. It is a shame that we are focused purely upon the LGBTQIA+ issue but I believe he also mentioned other people in that post.

**The Hon. MARK LATHAM:** Yes, I was on the list several times and I took no offence whatsoever.

**Bhante AKĀLIKO:** I think the difference is because you do not get defined by those attributes in the same way that LGBTQ+ people get defined and get told they cannot work at this particular school, they cannot apply for that job, they can be fired for that relationship. These are harmful things and it does not reflect—

**The Hon. MARK LATHAM:** Well, this is the arrogance of people who do not know the background of others and what they have been defined as in their life.

**Ms JENNY LEONG:** Sorry, Chair, the witness was speaking.

**Bhante AKĀLIKO:** It does not reflect—

**Ms JENNY LEONG:** Mr Latham does not have the right to interrupt.

**The Hon. MARK LATHAM:** There is an arrogance in this that is just shocking.

**The CHAIR:** Mr Latham, we are going to bring the—

**Bhante AKĀLIKO:** It does not reflect—

**The Hon. MARK LATHAM:** Shocking.

**The CHAIR:** Excuse me, Bhante, we want to give you respectful audience so we will allow you to complete and then my proposal is that we end the session. We are up to time, so 30 seconds, please, just to complete the point that you were making.

**Bhante AKĀLIKO:** Sure. So just to emphasise the fact that our words, our actions, our beliefs do have consequences and that when we use our religious freedom we should have regard to compassion, we should have regard to other views, we should have regard to the impact those words have. So we should balance our religious views with other people's right to be free from discrimination and free from those religious views.

**The CHAIR:** Thank you, Bhante. I thank our witnesses today for their patience and courtesy. Also to the Bishop, thank you very much, and to Ms Christian. There will be questions on notice. The Committee secretariat will forward them to you. We thank you for your responses to those in anticipation. Again, thank you for your participation in this important inquiry.

**(The witnesses withdrew.)**

**(Luncheon adjournment)**

**GEOFF NEWCOMBE**, AM, Chief Executive, Association of Independent Schools of NSW, before the Committee via videoconference, sworn and examined

**JOHN WHITEHALL**, National Chair, Christian Medical and Dental Fellowship of Australia, sworn and examined

**The CHAIR:** I apologise for the delay. I thank the Committee staff and IT for trying to help us resolve the issues with the videoconference link. We think we have a patch but we will see. I welcome our fourth panel of witnesses for the inquiry today. Thank you for your patience. I have relatively late apologies for what would have been our third witness in this group today, Dr Patrick Quirk, Associate Professor, St Thomas More Law School, Australian Catholic University. He had a family matter he had to attend to so we have two witnesses.

I will quickly outline our process for witness questioning by members of the Committee. The hearing is being broadcast live through our parliamentary website. The way we will proceed today is instead of both witnesses offering up opening statements we will go straight to questions. Each member of the Committee on a rotational alphabetical basis has five minutes in which to ask a question and for you to answer. We will give you some time to complete your answer. We may have some time at the end where members can do a bit of a wrap-up with further questions. Do you have any questions about the way we will proceed today?

**Professor WHITEHALL:** No.

**The CHAIR:** Dr Newcombe, any questions?

**Dr NEWCOMBE:** No, thank you.

**The CHAIR:** Very good. Dr McGirr, you have the first question.

**Dr JOE McGIRR:** Thank you very much, Madam Chair. My question is specifically to Dr Newcombe. Dr Newcombe, in your letter to the Committee you made a comment there about particularly supporting clause 22M of the bill. We have heard evidence today and prior to today about concerns about 22M and the power this would give to some organisations to adversely influence or affect people. I am interested in your views about how this would work and the importance of it from your perspective.

**Dr NEWCOMBE:** Our focus is very much on preferencing the ability of schools to employ and the ability of schools to enrol. We have expressed that view in the Federal review and we have expressed it in this review. The status quo, where we come under the State Act we have exemptions there and the Federal Act where, as you know, we have some exemptions under the Sex Discrimination Act. At the moment what I will call the status quo has worked well for our schools but if this bill was enacted we certainly would not want to lose that right to preference both employment and enrolment.

**Dr JOE McGIRR:** Perhaps you could just explain why that is so important.

**Dr NEWCOMBE:** I think it is critical to the operation of our schools. I am covering two things there. If I move to employment there are many factors that schools consider in employing a teacher, if I can look at teachers first. Over the years it has worked extremely well. I cannot recall the exemption under the Federal Act ever being tested. We sought some advice from our lawyers and they could not recall it, either. But nevertheless it is critical that faith-based schools that in many cases have been established by parents have that right to make sure that the teachers teaching in those schools either support or certainly do not diminish the values and the ethos and the tenets of those schools. While we see it really as a safety net, it is essential because people with intent could virtually destroy some of our schools. It is very important that the exemptions are there and the right of employment and enrolment is there.

**Dr JOE McGIRR:** You mentioned as well the students, I think.

**Dr NEWCOMBE:** Yes. Student enrolment policies differ. Generally, the enrolment policies are very broad. I think like Government schools, like our public schools, we do preference some students. I mean the public schools preference on location. They preference on academic ability with their selective and semi-selective schools. Our schools have a number of factors that they look at in enrolment. I mean, we do not really use location. We will preference siblings sometimes or preference students that are children of alumni. There is no doubt that in some cases we will preference faith, particularly where schools have been established by faith communities. But, again, the focus of our schools is on excellent teachers and teachers that will fit in with our school community.

I would just give you an example; it might be easy. I was talking to the chair of one of our largest Islamic schools. Now they do not even ask a person who they going to employ about their faith. They focus on the quality of that person as a teacher, how they will fit into their school, and the fact that they will respect the school's

religion. I believe that more than half the teachers in Islamic schools are non-Islamic people. A number of the heads, or principals as she might call them, of Islamic schools are non-Islamic.

**Dr JOE McGIRR:** Thank you very much, Chair. I am happy with that. Thank you, Dr Newcombe.

**Dr NEWCOMBE:** Thank you.

**Ms TANIA MIHAILUK:** Thank you, gentlemen, for being in attendance today for our inquiry and for your submissions. I am interested specifically in having a bit of a comparison. I note that we now have for the first time in our inquiry some representatives coming to our hearing with respect to the health sector. My next question will be specifically to Professor John Whitehall. Professor, thank you for your submission. I just want to ask you this: Have you had a chance to peruse perhaps some of the other submissions that have been provided within the medical field? There is a number of them.

**Professor WHITEHALL:** Yes. I read the one by the AMA and I have here the one by the Royal Australian and New Zealand College of Obstetricians and Gynaecologists [RANZCOG].

**Ms TANIA MIHAILUK:** Specifically I want to turn your mind to RANZCOG because we will have them here later today. You have read their submission and I just want to ask you if you have any views with respect to their submission, in particular to the reference to believing that, in their words, the provisions covering religious ethos organisations will somehow jeopardise access to necessary health services. Could you comment on that?

**Professor WHITEHALL:** Yes. They say that, "If passed, it will have serious consequences for fair and equitable access to health services in NSW." I am very disappointed in the RANZCOG submission because I think it reveals an enormous ignorance of the history of the development, in their case, of obstetrics in this country. The first obstetrics hospital, I understand, was started by the Sisters of Charity. It ultimately became St Vincent's Hospital. Another one soon after that was started by the Benevolent Society, which became the Royal Hospital for Women, which I happen to be born in. These hospitals were started providing care for the poor and the outsiders in this community and the various sins and weaknesses of the people that were there, the mothers that were there and so forth. These services were and are provided without prejudice.

To say that fortifying and encouraging people in their Christian faith is somehow or other going to turn their back on almost 200 years of unquestionably fair and equitable provision of health I think is historical nonsense. I am glad I am not a member of that college. I am a member of another college. I think this is inexcusable, quite frankly. I think also they are leaning to hyperbole in that. There is hyperbole in this rejection of the history of the contribution of faith to this State, past and present, and there is hyperbole in the things that they say are going to happen if this bill is passed.

This is ridiculous. They are saying that Christian people somehow or other will be refusing to take part in emergencies. I mean, this is insulting. Over here the AMA says that Christian people should be muzzled so that they do not create offence and they do not insult. This is insulting to say that members of my organisation or the Catholic organisation or a Muslim organisation or whatever would not take part in an emergency—would let a mother die rather than do something. This is just nonsense. I forgive them because they are resorting to hyperbole when their historical cases very weak. I am very critical of many of the things that RANZCOG and the AMA have said.

**Ms TANIA MIHAILUK:** Professor, is it possible just to specify which particular areas you are concerned about? Is this the reference that they make at the end, "enforcement of professional standards in health care" and the "implications of section 22S", for example?

**Professor WHITEHALL:** I have got it listed here but the one I was talking about is that they are arguing that somehow or other the religious ethos of organisations—

**Ms TANIA MIHAILUK:** Yes, that was the other point.

**Professor WHITEHALL:** —is inappropriate and that this somehow or other should be curtailed because otherwise it needs to be non-discriminatory and non-judgemental. My argument to that would be: Look at the facts. Look at St Vincent's Hospital as it is now. It is a religious ethos organisation which is open to everybody, including the LGBT, and they mention that here. Who has been more involved with the LGB community than St Vincent's Hospital? Can anybody say that they have been judgemental or discriminatory? No. This is nonsense, this stuff which is here. I am not a Catholic. I never studied in St Vincent's but I am saying that they are insulted by this. The truth is to the contrary.

What else did they say? Well, they mention the emergency situation. We mentioned that is insulting to all members of the profession. None of us would sit by, no matter what religion we were, and let somebody die

without doing something. That is completely hyperbole at best. They say there are serious consequences for fair and equitable access and I would say go back to the history. Who started the Benevolent Society? Who started St Vincent's? Who started the access to people?

The AMA is mentioning people who are logistically challenged. In other words, they are out there in the country and no-one can get to them. Who started that? That was John Flynn and the Royal Flying Doctor Service and the Australian Inland Mission. They started that thing in 1912 because they are a religious ethos organisation. They did that to provide a mantle of safety to all women and children and everybody else who were out there and who were logistically challenged. Are you going to pass this bill that is going to stop that? That is ridiculous.

**Ms TANIA MIHAILUK:** Thank you, Professor.

**Ms ROBYN PRESTON:** My question is to Professor Whitehall. We have heard from other witnesses that they feel with a bit of tweaking of the current legislation there is opportunity to put some content on religious freedom in what we have currently going rather than a separate bill like we are looking at. What are your thoughts on that?

**Professor WHITEHALL:** I would need that question on notice to look at the finiteness of the law.

**Ms ROBYN PRESTON:** You talked about the importance of disbanding the myth of comments from other submissions about the fear that they have if this bill is passed, and the lack of support from different groups for minority groups. Could you expand a little more on that?

**Professor WHITEHALL:** Which organisations have been, and still are, more involved with minority groups than those that began with a religious ethos? We Christian people, quite frankly, donated that to the people of New South Wales. Not as ourselves, that would be biblically incorrect, but we are expressing what we believe is our mandate to practice agape, commitment and love to everybody.

**Ms ROBYN PRESTON:** Which is a Christian ethos?

**Professor WHITEHALL:** Yes. Jesus said, "When did you see me hungry and thirsty, in prison and naked", and all that sort of stuff. "You did it to the least of these, my brethren." That is our mandate: do it to the least of these, my brethren. Not to ask the person who is poor how much money they have got to get, or even if they are going to pay me. No, you have got the whole thing wrong. The detractors have got this whole thing wrong. It was the agape commitment in Matthew 24 to the poor and the weak and all those sorts of people that motivated these organisations. If you take away their motivation, the whole State is going to be deprived of it.

People do not understand the commitment that Christian people have in the provision of health care. Go to New Guinea or the backwoods of Bangladesh, where I was recently, or the middle of Africa—these are our brethren who are out there because of their religious beliefs and they are committed to doing this. All we ask for basically in this legislation is that you do not try to muzzle us. We have our beliefs, we will be respectful and we will commit and everything like this, but we need to be protected.

We feel that we are, in fact, a minority. The AMA is saying that somehow or another St Vincent's will discriminate against other people. That is nonsense. Where the discrimination is now is against us as a minority. We believe certain things and on the basis of those, my members, my young people and my medical students tell me that we are the ones being discriminated against. They are talking about not being able to get jobs if you are not a Christian, but it is the other way round. For all its statement of equity, you try and get a job at the RANZCOG if you do not entirely go along with everything it wants you to do. It is the Christian people who are having difficulty getting the jobs.

**Ms ROBYN PRESTON:** Dr Newcombe, would you like to comment on that?

**Dr NEWCOMBE:** It was very difficult to hear that question, but certainly in the independent school sector—and I can only comment on that—employment decisions are really made based on the quality of a person as a teacher, as well as their willingness to be a role model for the students and be involved with the school community. Certainly if they are not of the school faith, then it is very important that, while they may not feel that they can strongly support that faith, they certainly will not diminish it. I think that independent schools have done a marvellous job managing to balance individual rights with the values and ethos of the school, and certainly the rights of the parents who, in many cases, have established the school. As I said earlier, this whole concept of discrimination and intolerance and so on is just so inaccurate and so misleading when it is in reference to the operations of individual independent schools.

**Ms ROBYN PRESTON:** Just following on from that, Dr Newcombe, do you feel that your hands will be tied if this bill is passed?

**Dr NEWCOMBE:** Well, we certainly would not support the bill if, in any way, it restricts independent schools' ability to preference employment and enrolment, as well as its ability enforce its anti-bullying policy to protect students.

**The Hon. GREG DONNELLY:** Thank you for appearing before the Committee, Dr Newcombe and Professor Whitehall. Professor Whitehall, in your response to questions from Ms Tania Mihailuk, you made some reference to RANZCOG and its submission to this inquiry. You also made some reference to the Australian Medical Association New South Wales. With respect to the AMA New South Wales, I gather from the content of your response to the question that you have read its submission?

**Professor WHITEHALL:** Yes.

**The Hon. GREG DONNELLY:** Do you have a copy of its submission before you?

**Professor WHITEHALL:** I do.

**The Hon. GREG DONNELLY:** Its submission is submission number 139 to this inquiry and covers nearly seven pages. If you would not mind going through each page in order, and I will not ask you to comment on every last element of the submission. Which particular aspects of the submission caught your attention? If I understand correctly from your evidence to Ms Mihailuk, you had some concerns around some of them. Would you mind drawing that out for the Committee so that we can see specifically which parts of the submission are of most concern to you?

**Professor WHITEHALL:** There are two lists of people here who would allegedly be discriminated against if this bill is passed. They have repeated it twice, and they are saying that an individual who faces stigma and uncertainty when trying to access health services—

**The Hon. GREG DONNELLY:** Sorry, which page are you on?

**Professor WHITEHALL:** I think that I am on page 3, on the second to last paragraph. You can see the lists of all the people that they reckon will be disadvantaged if this bill is passed. They go on to say how people from culturally and linguistically diverse backgrounds, asylum seekers and refugees, women, young people, individuals with mental health illnesses, individuals who are logistically challenged—they are those in country areas—notable individuals with disabilities, the elderly and those living in rural and remote areas will be disadvantaged if this bill is passed. That is complete nonsense.

Time is limited, but I could go through the history of each of the contributions by Christian people, including through the Benevolent Society, St Vincent's, the Salvation Army and Dr Barnardo's Homes—although that is a little bit controversial, because there some of the children were abused. The original idea of taking them from the slums of London and giving them refuge was wonderful, but human nature got involved and it did not work out that way. All these things we Christian people have been involved with—or started and maintained in fact—and then secular organisations then came on board, of course. Do you reckon that somehow or another this bill is going to stop this? This is madness. Do you think that this bill is going to stop St Vincent's or Sydney City Mission doing what they are doing?

**The Hon. GREG DONNELLY:** You specifically made comment with respect to the second to last paragraph at the bottom of page 3, so I understand that. Are there any other elements of the AMA New South Wales submission that you wanted to specifically draw to our attention?

**Professor WHITEHALL:** This other business here about if you pass this bill, allegedly—

**The Hon. GREG DONNELLY:** Where are we looking now?

**Professor WHITEHALL:** We are number four of the last paragraph.

**The Hon. GREG DONNELLY:** Page 4.

**Professor WHITEHALL:** If you pass this bill, people will be able to make statements that offend, insult or intimidate. Well, who is making the offence here? It is the people who are offensive against St Vincent's Hospital, saying that they are going to discriminate. That is an offence. That is an insult. What about the intimidation? There is intimidation of young people that exists in their choice of various subspecialties and, quite frankly, in RANZCOG it is the young Christian people—the students who I am associated with—who feel intimidated, bullied and harassed. The AMA is talking about bullying, harassment, intimidation and all that sort of stuff. Who is getting that most in the health profession these days? It is people of faith, quite frankly. To say that your bill will make that worse is just ridiculous.

**The Hon. SCOTT FARLOW:** My question is directed to Dr Newcombe, and it is picking up on the line that my colleague Robyn Preston was asking you with respect to the bill. I think you made the comment that



you would not support the bill if it in any way diminished your ability to be able to select who you employ, who you are allowed to have in independent schools or whatever those rules may be in place. I take it, then, that clause 22M in the bill, which states that religious ethos organisations taken not to discriminate in certain circumstances, is fundamentally important for you in supporting this bill?

**Dr NEWCOMBE:** Yes, it is.

**The Hon. SCOTT FARLOW:** Would you explain to the Committee why that is the case and perhaps some examples by which schools or members of yours would use those provisions as such at the moment?

**Dr NEWCOMBE:** Yes. As I said before, Mr Farlow, I do not think the provisions have ever been used and we see them there as a real safety net when they are needed. If I can talk about students first, in the 50 or so years that I have been in the education sector, I have never seen a student discriminated against by a school on the grounds of sexuality and other matters that have been raised before. We have been quite surprised at this sort of discussion around schools' attitude to students. In fact, I can give you an example if you want one. I know that students who are transitioning is an extremely complex situation for schools. I have had a chat to a couple of heads and I think we have about three or four cases occurring at the moment.

In each case the focus is on supporting the student. So this is complex, it is context-related and the schools find it very difficult but they are dealing with it. They are dealing with the parents, other parents and other students. We understand and are very proud of the way we can handle those matters and I have also been very pleased with the way other students in our schools have handled them. We are not looking at exemptions so that we do not have to deal with those matters at all. As I said, we are looking at the exemptions so that we have that safety net that, if people of intent want to make difficulty for our schools, we have that to fall back on. On the matter of employment, as I said before, we want to employ the best teachers.

Quite clearly, in faith-based schools there will be a percentage of those teachers of that faith but many schools would not even ask potential employees what their faith was. I am sure it happens in political parties, but if you have a particular philosophy and you employ someone and then two days later they go out on social media and rubbish your philosophy, I am sure that would put a strain on the employment contract. It is no different with schools. It is very important when we establish faith-based schools—be they Islamic, Jewish, Christian or whatever they are—that those parents have a right to make sure that when they send their children to those schools those children can be taught in an atmosphere where they support the values and the ethos of that school.

**The Hon. SCOTT FARLOW:** One of the things that the bill does is create something that we do not have at the moment, which is discrimination on the basis of religion. I take it in the sense that, without a provision such as this—for instance, I am an Anglican and I sought for my son to go to a Catholic school and I was told that there was no chance of him being able to go there because they were not Catholic. Without a provision such as this, for instance, I would potentially be able to bring a claim of discrimination on the basis that I am an Anglican and my son was not able to go to a Catholic school. Is that one of the concerns that you would have in terms of how your schools select their enrolment?

**Dr NEWCOMBE:** I cannot speak for the Catholic system and how they select their enrolments. As I said to one of the earlier questions, our schools generally—I am just talking the independent schools—have a very broad enrolment policy. Obviously, if a school has been created by a particular faith community, those parents would want their children in that school but the school would welcome—before you were asking me for examples and I will give you an example of the Seventh-day Adventists. They have terrific schools. They started off as schools for Adventist children. One of the heads told me the other day that now they probably have 70 per cent non-Adventist children and welcome them with open arms and so do the Islamic schools. So, as I say, I can only comment on the independent school sector. But, generally, enrolments are open to children of all faiths or no faith.

**The Hon. SAM FARRAWAY:** My colleague Mr Farlow has actually stolen my thunder. Dr Newcombe, I wanted to touch on what Dr McGirr, Robyn Preston and Scott Farlow were touching on around clause 22M of the bill. Do you think it is fair to say that those who oppose clause 22M and the relevance to independent schools—and I will declare for the record that I went to an independent school as well—that there is a huge misunderstanding with how you would embrace or how you would use that clause, or support having that clause in the bill as the safety net? Because the evidence and commentary you have given us here today is that in your knowledge no independent school has ever had to turn away someone based on sexuality, age or gender and that it is quite inclusive. You have spoken about the teachers who fit into the school community and respect the school community and the quality of the person. Do you think there is quite a significant misunderstanding of how that clause is seen by the independent schools in this State?

**Dr NEWCOMBE:** My apologies, the question was a little hard to hear. I think generally, as I mentioned before, the language of discrimination and intolerance and so on is used—even in some of the questions we get asked that language is used. I am not sure whether it is used to convey a certain message that is not there, but when it is used in reference to our schools it is totally misleading. I think in answer to what you are asking, yes, there is a misinterpretation of how independent schools—and I can only speak for our independent schools, our Christian schools and so on—would use any exemptions that we had. I think history proves that.

As I said, in all the time I have been involved, I do not ever recall a teacher being dismissed because of their sexuality or whatever where they have worked closely with the school, perhaps not to strongly support a faith but certainly not to diminish the faith, and to publicly focus on being a high quality teacher who broadly supports the tenets of the school. I think that is what you asked me and, yes, I think there is. Is it purposeful? I am not sure. But certainly there is often a misinterpretation of how this legislation would be applied.

**The Hon. SAM FARRAWAY:** In your submission you touch on the parents' right to choose a faith-based school or the option to go to a government school. Could you expand any further on the broader independent school community about parents' views on the bill and, in particular, clause 22M and how passionate they feel, especially in making that decision as parents do? For many, it is a really tough decision to send their kids to an independent school.

**Dr NEWCOMBE:** Look, I honestly cannot give you an answer to that, but I could take it on notice and ask a number of heads. My relationship is very much with the heads or principals of the schools and prior to my being invited to this Committee, I had—as we all do—a Zoom conference with a very representative group of heads from schools of every denomination. Those schools were very supportive of the position that the Association of Independent Schools has taken as the peak body for our independent schools in this State.

**The Hon. SAM FARRAWAY:** Thank you for that, if you could take it on notice for the Committee that would be fantastic.

**Dr NEWCOMBE:** I can ask some heads about that for you and get back to the Committee.

**The Hon. MARK LATHAM:** Professor Whitehall and Mr Newcombe, thanks for your attendance and participation, which is greatly appreciated. Professor Whitehall, just following up your comments about how professional accreditation bodies in the medical field handle these things just ask you to reflect on what I think is a very important test case in this area. It is not directly related to medicine but it goes to a professional grouping, the social workers. It is the case of Felix Ngole in the UK, who from an African background was a born-again Christian studying social work at The University of Sheffield. Not related to his studies, he posted on Facebook his support or sympathy for Kim Davies, who in the United States had been a born-again Christian, marriage registrar, who was sent to jail for not issuing same-sex marriage certificates as part of her work. That does seem a bit extreme; maybe they could have just sacked her instead of jailing her.

As part of his commentary, Felix also said that same-sex marriage and homosexuality in his opinion were sinful. He was kicked out of the university course and under UK law took it to court. The lower court found in favour of the university but then the High Court found in his favour and this was the end of the case. I think it is a very important principle that the higher court found that the university, in kicking him out, and the lower court in supporting this, had confused religious expression with discrimination. Is not that the core phrase really as to the RANZCOG and the AMA confusing religious expression with discrimination? Religious expression is not automatically a form of discrimination.

Do we not have to get to the point in society now where so much reflection on words that are spoken—unless there is a directly personally vilifying or inciting violence, comment about someone—if you have really just got a commentary about a general group in society and you fit yourself into it and claim outrage and harm and offence, it is unlimited, is it not, as to how we would deal with that? Basically everyone would get kicked out of every organisation at one time or another. Do you think that the Ngole case gives us some direction as to how these professional bodies and universities should handle themselves in a more mature, commonsense fashion?

**Professor WHITEHALL:** I think they should look back on the history of what the religious ethos has done and they would see that the religious expression has in fact been the most inclusive, diversified organisation for provision of health care and other things that exists. We are diverse and we are not exclusive. We do not discriminate. We are embracing. Our record shows that—take St Vincent's itself. So yes I think it is wrong to say that just because you have religious discrimination therefore this is an insult—therefore you would discriminate. Jesus taught that that would be wrong and therefore I do think that it is wrong.

I think if we are going to make public statements on various issues and part of democracy should be the right to discuss things in a respectful non-injurious manner. The Bible says let your speech be mellow and soft but nevertheless accurate and seasoning with salt. It does not give you the ability to traduce and insult and things

like that. Your speech should be seasoning like salt—that is what the Bible says. The Bible may therefore disagree with various behaviours of people but the old business is we are to hate the sin, so to speak, but love the sinner. We are only human beings and we have erred, there is no question about that, and we will continue to err but that is at least our goal.

**The Hon. MARK LATHAM:** In your experience can you reflect in the indirect way of this Ngole case, the reason The University of Sheffield kicked him out was they said you will never be able to do social work with LGBTIQ people because you have said these things. Is not the whole nature of being a professional that while we all hold certain views about the world and, in many cases religious beliefs, that you can do your job in a genuinely professional way regardless of what you think of certain groups in society or whether you have got certain beliefs that reflect on those groups in a particular way?

**Professor WHITEHALL:** Yes, it is. To give you a certain example, I was involved in another country, in one way and another, I was involved in the provision of care to people who were in fact murderers. Their crimes were dreadful but that is between them and their maker. The maker says to me and to my religious ethos confreres that you are to be involved in the distribution of agape love, which is non-critical, inclusive, self-sacrificial and knowledgeable. That is our mandate from above. He can sort out who was right or wrong when we get to the pearly gates.

**Ms JENNY LEONG:** Mr Whitehall, I might come to you first. Do you support religious ethos organisations being able to discriminate against someone on the basis of their disability, sex, marital status, domestic status, homosexuality, transgender status or carer responsibilities?

**Professor WHITEHALL:** I thought I had gone to a considerable effort to say that the tradition of religious ethos—

**Ms JENNY LEONG:** I am asking in relation to the organisation that you represent—

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

**Ms JENNY LEONG:** I appreciate—

**The CHAIR:** Excuse me, Ms Leong. I will hear the point of order please.

**The Hon. GREG DONNELLY:** The member knows full well that a witness is entitled to complete the answer to the question before they move on to the next question and not cut them off. The member clearly cut off Professor Whitehall as he was answering the question. I would ask you to remind her to exercise courtesy towards the witnesses.

**The CHAIR:** Thank you, Mr Donnelly. Professor Whitehall, would you conclude your answer.

**Professor WHITEHALL:** I have forgotten the question.

**Ms JENNY LEONG:** So I was hoping to clarify my point. I was building on the fact that you had talked about these religious hospitals—St Vincents and others—that offered care of that type. I was asking, I guess, in the current situation rather than going back on the history. If your submission today is that a religious ethos organisation should be able to discriminate against someone on the basis of disability, sex, marital status, domestic status, homosexuality, transgender status or carer responsibilities, which you will note are the current protected attributes in the Anti-Discrimination Act.

**Professor WHITEHALL:** Should a religious ethos organisation be able to discriminate against people? No. That is not our mandate from above. I tried to make that clear so maybe I should say it again. We are to be involved with the hungry, the thirsty, those in jail and so forth.

**Ms JENNY LEONG:** So can I ask you then do you think a religious hospital or indeed a healthcare service or a healthcare practitioner should be able to discriminate against people on the existing grounds of those protected attributes in the Anti-Discrimination Act?

**Professor WHITEHALL:** I thought I made that abundantly clear and my answer is no. We are not to discriminate in the provision of agape love for the illnesses of people—no.

**Ms JENNY LEONG:** Thank you. So given that this bill extends what are protections against discrimination almost, human rights protections that we will all agree as human rights protections they are intended for humans, it extends those to religious ethos organisations. I do not think within the submissions we have received or indeed within the broad spectrum of views that this Committee holds, that anyone objects to the idea of inserting protections against discrimination on the grounds of religious belief or religious activity into one of the protected attributes within the Anti-Discrimination Act. But this bill does go further than this and provides protections—

**Ms TANIA MIHAILUK:** Point of order: I am not sure if this can be a point of order but I just want to clarify, Ms Leong, I do not think that is quite correct what you have just said.

**Ms JENNY LEONG:** It is my view that there is a broad range of organisations—

**The CHAIR:** Excuse me, members. I have heard the point of order. I will give Ms Leong an opportunity to reframe the question.

**Ms TANIA MIHAILUK:** To the point of order: Ms Leong has stated that everybody shares the view that they have no concern about religious activity being brought in to the Anti-Discrimination Act. I do not think that you can make that statement. There are people, there are witnesses—

**Ms JENNY LEONG:** I am happy to take the point of order, Chair, and rephrase my question.

**The CHAIR:** Ms Mihailuk, I will give a chance to Ms Leong to reframe.

**Ms TANIA MIHAILUK:** No, I think it is a fair point.

**The CHAIR:** Please, if all questions and points of order can come through me as Chair, it will be much easier to manage the session. Ms Leong.

**Ms JENNY LEONG:** Where I was trying to get to, Professor Whitehall, was the fact that this bill provides protection to religious ethos organisations against discrimination. I would put it to you that religious ethos organisations are not individuals, they are not human, so it expands the scope of providing protection to organisations as well as individuals. I wonder whether you would support the idea of organisations associated with the other protected attributes in the Anti-Discrimination Act also being afforded that same level of protection?

**Professor WHITEHALL:** Strike.

**Ms JENNY LEONG:** Apologies for the long interjection, interruption.

**Professor WHITEHALL:** I mean, that is a convoluted question, and I suspect it is like a scorpion with a sting in the tail. I would like to take it on notice, if I may.

**Ms JENNY LEONG:** Sure. It was certainly not intended as a scorpion. I am genuinely curious about where this extends.

**The Hon. GREG DONNELLY:** Death adder.

**Ms JENNY LEONG:** Dr Newcombe, you may need to take this on notice. I wanted to ask whether or not you support the idea of organisations being included as part of the protections offered in this bill, and if you then support the idea that other protected attributes, as set out in the Anti-Discrimination Act, that have associated organisations would have similar protections around being able to discriminate? There is no way you are going to be able to answer that in 20 seconds, now minus five seconds.

**The CHAIR:** Thank you, Ms Leong. Dr Newcombe, we will have you take that on notice. I am keen to give other members a chance to ask questions of the both of you. Mr Lynch.

**Mr PAUL LYNCH:** Professor Whitehall, in your submission you say:

We wish the Bill could go further in protection of the right of conscience for medical and dental practitioners ...

What do you mean? How much further would you like it to go?

**Professor WHITEHALL:** I think I would withdraw that. I think in retrospect I was not sure which way this bill was going to go, we were not sure which way this bill was going to go. I think in its current form we are satisfied that it is doing its best to protect the rights of our members for freedom of religious expression.

**Mr PAUL LYNCH:** That is all I had, Chair.

**The CHAIR:** We are in free time now, so if members would indicate if they have further questions? I thank the witnesses for their time, for the good humour with which you accepted the questions and the challenges put to you today and note that there are a number of questions you have on notice. The Committee secretariat will make contact with you to clarify. I thank you very much for your written submissions and the time you have taken today to join the Committee. We look forward to keeping in touch with you. I will close this session.

**(The witness withdrew.)**

**(Short adjournment)**

**VIJAY ROACH**, President, Royal Australian and New Zealand College of Obstetricians and Gynaecologists, affirmed and examined

**JULIE HAMBLIN**, Board Director, Royal Australian and New Zealand College of Obstetricians and Gynaecologists, affirmed and examined

**JUSTIN KOONIN**, President, ACON, affirmed and examined

**BRENT MACKIE**, Associate Director, ACON, affirmed and examined

**The CHAIR:** I welcome and thank the witnesses for taking the time to join us today.

**Ms TANIA MIHAILUK:** I do not have many questions, but to the representatives from RANZCOG, were you able to hear any of the previous submission? No. I do not want to put you to a disadvantage in that regard. Have you seen any of the other submissions at all?

**Dr ROACH:** Some of them, yes, we have seen the AMA one and—

**Ms TANIA MIHAILUK:** Particularly I was thinking whether you had seen any of the others around the medical field, but that is okay, it might be a little bit hard to ask that particular question then. I do not want to disadvantage you just because the previous witness had made comment on your particular submission, that is all. Can I ask, I acknowledge some of the concerns that you have with this idea that the bill could interfere with enforcement of professional standards of health care and that it could entitle organisations, specifically I quote:

The hospital or health facility may be permitted to employ only people who hold certain religious beliefs that are hostile to particular groups ...

I wanted to ask you, and obviously it is difficult to back that data or that statement up, given there is no such bill now to compare, but would not your experience right now be with hospitals like St Vincent's and other major hospitals with a religious ethos that that would not be the case, that they in fact employ a very broad range of people in their hospitals, and that health care is not in any way impacted as a result of their particular faith or ethos?

**Dr ROACH:** That is a really good question. I actually work at the Mater Hospital at North Sydney, so maybe over 20 years have had experience of being involved in that hospital and I do think that the staff do reflect the Catholic, that they are primarily Catholic, that therefore the ethos is Catholic, as is the hospital, and I do think that that does influence the care that patients receive. Specifically, it influences it because there are some parts of medical care, particularly in obstetrics and gynaecology, that are not provided at the Mater, and that could be very highly relevant for a pregnant woman, for example, who wants to choose to have a termination of pregnancy, then having booked into the Mater that is not provided at the Mater. I think that that ethos is definitely there—

**The CHAIR:** Dr Roach, would you mind speaking into your microphone a little bit more, thank you.

**Dr ROACH:** Sorry. I think that that ethos is there. But I accept your point is that I do not know that I can give you data. I can only reflect back to you what has been my observation of a general perception there.

**Ms TANIA MIHAILUK:** Perception is perhaps a bit different to the reality.

**Dr ROACH:** I accept that. I do not think one can prove it either way, as you said.

**Ms TANIA MIHAILUK:** I do not know whether this bill would necessarily make much difference into the way they now operate and whether the bill, if the bill should be enacted, would actually provide a platform for these hospitals to then suddenly not be as diverse as they possibly are now. I think of an example like St Vincent's. I have had some dealings with St Vincent's Hospital myself. I certainly have met a number of staff there who are not Catholic and, indeed, not religious at all. It certainly has not affected their ability to provide very high standards of care. I was just a little concerned about that kind of statement only because we have asked a number of people who have been witnesses to this inquiry to provide appropriate data that backs up their particular claims, given that we are trying to prepare a very extensive report.

**Dr ROACH:** I do not think that our statement makes a claim. We do not have the data and our statement therefore simply points out this is a risk and one without any substantial benefit.

**Ms TANIA MIHAILUK:** But a risk that is also not substantiated. That is the point that we make.

**Dr ROACH:** Correct. We are in agreement, I think.

**Ms TANIA MIHAILUK:** But you do actually make the comment that it will have serious consequences for fair and equitable access. That is quite a statement, you would have to say. Ordinarily if a statement like that

is made, we would ask—and it is no disrespect to you and it is the same sort of question that we are asking everybody when they are making very firm statements—that they perhaps provide some documentation or evidence to support a very strong statement, as that is.

**Ms HAMBLIN:** If I could make some comment in response to that—

**Ms TANIA MIHAILUK:** I have got a question also—

**The CHAIR:** Ms Mihailuk, your time has expired.

**Ms JENNY LEONG:** I'm sorry, Chair. The witness was trying to respond. I think I have been pulled up a number of occasions on that. I think it is reasonable to allow the witness to respond.

**Ms TANIA MIHAILUK:** Madam Chair, if there is time at the end I will come back to that because I have got more questions.

**The CHAIR:** Ms Leong, would you like the question to be answered?

**Ms JENNY LEONG:** If a question is asked of an organisation that is here making a submission, then both representatives of that organisation should be able to make a contribution to the answer.

**The CHAIR:** I agree, but it will take up Ms Preston's time.

**Ms ROBYN PRESTON:** I do not mind if it is a brief answer. That's fine.

**The CHAIR:** Ms Hamblin was responding.

**Ms HAMBLIN:** The point that I simply wanted to make—and I can make it very briefly—is that at the moment we have a regime that protects a number of attributes under the Anti-Discrimination Act and that affects the way in which health care is provided. What this bill would do is to change that and to, in some circumstances, privilege the protection of religious beliefs. The point that we were making in our submission was simply the impact that that could have in a health care context.

**Ms TANIA MIHAILUK:** I just want to clarify, though. The submission does not say that it "could have"; it says that it "will have". That was the point that I was trying to make. There is quite a difference from "could have" to "will have" and why I ask if there was any supporting documentation to that sort of statement. That's all.

**Ms ROBYN PRESTON:** My question is to our two gentlemen from ACON, Mr Mackie and Dr Koonin. You have got one particular paragraph in your submission:

It is clear to ACON that such changes to legislation will make it near impossible to foster inclusive cultures or meet broader community expectations around treating people equally and with respect.

Is it your opinion that faith-based organisations do not care about particular groups? Is that what you are actually explaining there?

**Dr KOONIN:** On the contrary we found many faith-based organisations particularly inclusive and we have worked hard to build those connections with faith-based organisations. Not all faith-based organisations have been welcoming. But we certainly would not want to portray that there is some kind of a schism between LGBTQ communities and faith-based organisations. Many of us are faith based ourselves.

**Ms ROBYN PRESTON:** Good. Because it came across that way when I read that. I just wanted to clarify that. The other point was in the paragraph below:

The recent public health crisis which has seen religious gatherings restricted to prevent the spread of COVID-19 could be challenged under this law.

Did you seek legal advice about that? Is that why you are writing it in your submission?

**Dr KOONIN:** We did not seek direct legal advice. We are not lawyers ourselves, but we worked closely with and followed the submission of Equality Australia, who we believe did.

**Ms ROBYN PRESTON:** But you did not.

**Dr KOONIN:** No, we did not seek legal advice.

**The Hon. GREG DONNELLY:** I might start off with a question to Dr Koonin. I will just take you to page 2 of ACON's submission and the second last paragraph. I will not read the full paragraph, but it starts with, "The bill (section 22M) expands existing exemptions", and then goes on. In the last sentence of that paragraph, you say:

This exemption is in addition to already existing exemptions that allow faith-based organisations to discriminate against people on the basis of sex, sexuality and marital status.

These are the existing provisions in the New South Wales Anti-Discrimination Act. That is what you are referring to, I gather.

**Dr KOONIN:** There are existing provisions in New South Wales law and also Federal law under the Sex Discrimination Act and other discrimination acts.

**The Hon. GREG DONNELLY:** Specifically with respect to New South Wales because this is the New South Wales jurisdiction we are dealing with and with respect to the position that is in the current law, is it the position of ACON that these existing provisions, or "exemption provisions" as you see them, are discriminatory in their nature and that those provisions themselves as they currently exist ought to be removed from the statute books?

**Dr KOONIN:** It has been a longstanding position of ACON that in some cases those exceptions are appropriate and in some cases they are not. I would distinguish between situations where a religious organisation is performing essentially religious activities like the ordination of priests or the decision about whom to marry and situations where those organisations are acting more or less as an extension of government in the provision of public services.

**The Hon. GREG DONNELLY:** Can I take you then to the question of the exemptions with respect to specifically faith-based schools, as an example? Is it the position of ACON that those provisions as they relate to faith-based schools should be removed from the New South Wales Anti-Discrimination Act?

**Dr KOONIN:** It certainly the opinion of ACON that the exemptions in the New South Wales Act which permit discrimination against students—and I believe that those exemptions currently do permit discrimination against students—

**The Hon. GREG DONNELLY:** It is actually teachers and students. It is both.

**Dr KOONIN:** Correct, so I was separating my answer.

**The Hon. GREG DONNELLY:** I apologise.

**Dr KOONIN:** In the case of students, we believe that those provisions are unreasonable. In the case of teachers, it is—

**The Hon. GREG DONNELLY:** Sorry to interrupt. But whether it is an "unreasonable"—

**Ms JENNY LEONG:** Point of order: Mr Donnelly has consistently pulled me up on attempting to clarify while a witness is answering a question. I think the witness should be allowed to answer the question before Mr Donnelly comes back in.

**The CHAIR:** Dr Koonin, would you like to continue?

**Dr KOONIN:** Sure. In the case of schools, we do not think schools should be able to discriminate against children. In the case of teachers, it is our view that in certain roles which are particularly religious in nature there may be reasonable exemptions. It is also our view that, for example, a maths teacher in a school which claims to have a religious ethos and is also receiving public funds to do so should act in a way which is non-discriminatory. However, I accept that that is a more challenging argument and that others may have different views.

**The Hon. GREG DONNELLY:** Madam Chair, I jumped in because I knew the time just disappears like that.

**The CHAIR:** You have one more minute.

**The Hon. GREG DONNELLY:** Yes. Dr Koonin, I just want to be clear about this, and I do not wish to be disrespectful but I think you have been a bit obtuse, specifically with respect to the removal of the existing provisions in the Anti-Discrimination Act in New South Wales with respect to its application to faith-based schools. Is it or is it not the position of ACON that they should be removed with respect to—let us start with students first—I think that is clear. You have said it should be removed with respect to students. Is that the case?

**Dr KOONIN:** Yes, that is correct.

**The Hon. GREG DONNELLY:** So removed with respect to students. Now, with respect to teachers. So this is the ability of faith-based schools to employ teachers that honour and respect the doctrines, beliefs, tenants and the teachings of the school. Is it the position of ACON that those exemption provisions for teachers should be removed?

**Dr KOONIN:** Yes, it is, depending on the role and particularly where organisations are receiving public funding.

**The Hon. SCOTT FARLOW:** I am not sure if you have seen the submission from the NSW Jewish Board of Deputies, but it made the suggestion under recommendation 7 that a further subsection of section 22N should be added. It reads:

Add a further subsection to section 22N which provides an exception if (a) an organisation engages an employee or contractor specifically as a brand ambassador ...

I am just wondering if you think that is something that would be valuable considering the concerns you raise with respect to sports players in particular, effectively brand ambassadors, on the second page of your submission.

**Dr KOONIN:** I have not read the submission from the Board of Deputies and I would like to give a considered response, so I would be really happy to take that question on notice and get back to you.

**The Hon. SCOTT FARLOW:** Fair enough. With respect to some of the issues of concern with the bill that you have raised in your submission, there are a couple of examples you talk about. Again, on the second page you state:

It also means that an employer in a trusted public service organisation may be unable to engage in disciplinary action against a staff member (such as a teacher, paramedic or police officer) who expresses a faith based opinion about women, people with disability or people of diverse sexualities and genders, while on a break, or on a public forum such as social media while not at work.

Would you have the same view when it comes to traditional or classical marriage and expressing a view in that regard?

**Dr KOONIN:** I would be disappointed if an employee was disciplined because they expressed the view that marriage was between a man and a woman, and that was their religious view. I think there needs to be an amount of tolerance, but I think what this bill does not do is provide for nuance and context which is around the extent of the injury that comments could cause and the context and relationship within the organisation. But on the question of: Can someone express a view that they disagree with marriage equality? I would have no problem with that.

**The Hon. SCOTT FARLOW:** Okay, good to understand. In terms of that nuance, how would you suggest this Committee could look at how you would have a graduated scale—so to speak—at being able to determine that nuance or the level of offence that something may cause or the expression of some view?

**Dr KOONIN:** I do not think that there is one answer to that. I think all existing anti-discrimination law in Australia allows a reasonable consideration of context and if this were an ordinary garden-variety anti-discrimination bill, we would have no issue with it. The difficulty that we have with the bill as it stands is that it does not allow for that context. So the wording of anti-discrimination law which exists in New South Wales and at a Federal level and which takes into account context would be appropriate.

**The Hon. SCOTT FARLOW:** A question to both organisations, would you have a concern if there was an extension of a protected attribute under the Anti-Discrimination Act for freedom of religion or religious belief?

**Dr ROACH:** I do not understand the question, sorry.

**The Hon. SCOTT FARLOW:** If under the existing Anti-Discrimination Act as a protected attribute—as there exists the moment for gender, race et cetera—religion or religious belief was added, is that something that you would support? Or would you still have concern or believe that there needed to be further nuance?

**Ms HAMBLIN:** RANZCOG's position is, as we have set out in our submission, that we certainly support inclusion and non-discrimination. Our membership is broad and diverse. So we are certainly in favour of appropriate protection against discrimination on the ground of religious beliefs and what you have outlined is one way of doing it. As to the detail of that, I think that is a question that we would have to take on notice and get back to you. In principle, we are not opposed to that. We just believe that the provisions in this particular bill are not an appropriate way to achieve that end.

**Dr KOONIN:** We would certainly support it, too. Many members of our community are people of faith, and because we have experienced discrimination ourselves, we do not want others to be discriminated against, so we would support it.

**The Hon. SAM FARRAWAY:** Dr Koonin, in your submission you touch on section 22N and obviously faith-based schools. To come up with obviously an objection to that part of the bill, do you have any evidence? How do you form that concern? We have heard today in previous evidence that the Independent Schools Association have no knowledge of a student ever not being accepted into a school based on gender, sexuality or age. So, how do you get to the point where you do not support or you have concerns over that section of the bill?



**Ms JENNY LEONG:** Point of order—

**The CHAIR:** Yes, Ms Leong.

**Ms JENNY LEONG:** My understanding of that contribution by that witness also mentioned the fact that that witness was not able to speak on behalf of all different types of schools in New South Wales, particularly the Catholic Schools Association and other associations. I think it is important to clarify because some witnesses may not be aware that the Independent Schools Association does not cover all schools that are not public schools and I think it is important in the context of that to make that clear.

**The Hon. GREG DONNELLY:** To the point of order: I speak in support of the—

**The CHAIR:** Mr Donnelly, I did not call on you yet. Yes, Mr Donnelly.

**The Hon. GREG DONNELLY:** I reject what has just been put by the member.

**Ms JENNY LEONG:** That is surprising.

**The Hon. GREG DONNELLY:** The question is completely in order. It was presented in clear and unambiguous language. I clearly understood and I was listening quite intently. Members cannot tell other members how to ask questions. The member has asked the question, it is perfectly reasonable, there is nothing ambiguous about it and I support it fully and he will be able to proceed.

**The Hon. SAM FARRAWAY:** To the point of order—

**The CHAIR:** Mr Farraway.

**The Hon. SAM FARRAWAY:** Dr Newcombe made it very clear in his evidence that he as the head of that organisation—and we are only talking about that organisation, the Independent Schools Association, which clearly he said he does not represent the Catholic school system or the public school system—had no knowledge of a student never not being accepted into an Independent Schools Association accredited school. So it was pretty clear, his evidence, and I think that that goes to the question that I asked. I was only referring to what he gave in evidence.

**Dr KOONIN:** So your question after that discussion, to be clear, is: Do we have evidence of students being refused admission to schools on the basis of sexuality? No, I do not have evidence of students being refused admission to schools on the basis of sexuality. We certainly have evidence of students being discriminated against in schools. Some of that is anecdotal and there is some data that we can provide to the Committee. To your original question, no I do not know of an instance of a student being refused admission.

**The Hon. SAM FARRAWAY:** I direct my next question to RANZCOG. In your submission is it fair to say that you are concerned that the bill in its current form will weaken hospitals run by religious organisations to provide health care without prior judgement or circumstance, and how do you get to that point? We actually have heard some other evidence today that suggests that may not be the case and some of the intent of those faith-based organisations—like St Vincent's Hospital when they were set up with their charter and what they wanted to achieve. How have you gotten to that point as an organisation to form that view?

**Dr ROACH:** I think we already seen evidence of the fact that certain aspects of health care are not provided by those organisations. RANZCOG's overarching belief is that it is essential that healthcare providers provide equity of health care and that that is a right that the community deserves. We think that by providing yet another layer of protection in the form of protection because of religious belief, that potentially will increase the level at which religious institutions may be able to decline certain aspects of health care.

**The Hon. SAM FARRAWAY:** Do you have any examples of how that would be mitigated?

**Dr ROACH:** We do, which is that if you are a woman who books in to have a baby at the Mater Hospital—Mater St Vincent's at the Mater Hospital provides maternity care—and you book in in all good faith to have your baby there, you then have some, say, prenatal testing and find out that your baby has a condition that makes you want to consider a termination of pregnancy, the Mater Hospital will not continue your care.

**The Hon. GREG DONNELLY:** Hear, hear!

**Dr ROACH:** The Mater Hospital has not informed you of that fact at the time of booking in and so you find out when you are fully invested in having your care provided by that hospital. If your pregnancy continues under other circumstances and, for whatever reason, you would like to have a sterilisation at the time of your birth, the Mater Hospital will not allow that form of care to be provided.

**The Hon. GREG DONNELLY:** Hear, hear!

**Dr ROACH:** The Mater Hospital does not inform the patient when they book in and, to me, that is a form of discrimination which, under this bill, would be given credibility because that form of discrimination will be protected.

**The Hon. SAM FARRAWAY:** I am out of time, am I not?

**The CHAIR:** You are out of time.

**Ms JENNY LEONG:** Chair, if I may—

**The CHAIR:** Ms Leong, do you have a point of order?

**Ms JENNY LEONG:** Chair, I want to ask whether or not you might request that members do not offer their own commentary on responses that witnesses are making? Mr Donnelly appears to be running a commentary over here in relation to things he supports or does not. I do not think it is particularly helpful.

**The CHAIR:** Thanks, Ms Leong. We will make the request that members listen to the responses of witnesses, and if we work this well we will all have a chance to ask questions. We will now move to Mr Greenwich.

**Mr ALEX GREENWICH:** Can I start by thanking both of your organisations for the work you do to improve access to health care for, particularly, vulnerable groups. I would also like to acknowledge that this bill is obviously not law. This is an inquiry into this bill and I appreciate your advice here as experts talking about the risks that could come from this bill. I know you have been requested to provide evidence of a situation should this bill have been in place, and I know that that would have been challenging, but my question, following on from Mr Farraway's questioning, is that I am concerned that this bill will create new barriers to access to health care for vulnerable groups. Could you take us through—

**Ms ROBYN PRESTON:** Point of order: Is that your opinion or are you repeating someone else's?

**Mr ALEX GREENWICH:** I said it was my opinion.

**Ms ROBYN PRESTON:** Are we allowed to express our opinion in that way when someone else had a comment about their opinion? I am just looking at consistency.

**The CHAIR:** Thank you, Ms Preston. Mr Greenwich, advised by the comments being made by your fellow Committee member, would you like to ask the question of the witness please?

**Mr ALEX GREENWICH:** Sure. We have heard evidence that there are potential risks to access to health care for, particularly, vulnerable groups. Could I ask you to take us through what your concerns are about those risks to access to health care and what your concerns are based on?

**Dr ROACH:** I think that the way that I would answer that question is to talk about what my obligation is as a medical practitioner. As a medical practitioner I feel that I am a servant, that my job is to care for the community, to provide that care and to do it not without any consideration of my own personal or strongly held beliefs but in recognising that I have an obligation to provide emergency care, I have an obligation to provide the care that somebody requests and, if I am unable to provide that care—and, interestingly, you can do that under two circumstances: one might be because you might have an objection conscientiously, but the other might be that I do not have the skill to do it—then I have an obligation to ensure that that person has access to that care.

My concern with this bill is that if we create yet another layer that protects the practitioner, we are actually concentrating on the wrong group. The group we should be concentrating on are our patients, the people who seek our care, and that is who our obligation is to. So we need to be very careful that the practitioner or the hospital or the providers of health care do not use a bill such as this one to in some way disenfranchise, as you said, an already vulnerable group of people.

**Mr MACKIE:** If I may say some words? I do believe the way that the bill is constructed that it could potentially result in people from very vulnerable groups having restricted or issues in getting the health care that they need. I myself come from a particularly vulnerable group who does access health care all the time—I am HIV positive, I have HIV. When I first was diagnosed with HIV, I was in a very, very vulnerable position; I was quite sick. I had been in denial and was quite sick at that time. I had a Kaposi sarcoma cancer growing on my leg. I went to a doctor. Had I gone to a doctor who was at that time anti-gay or anti a person with HIV or somebody who was religious at that time, I could have suffered quite terribly from that experience and that might have been quite catastrophic for my health moving forward.

I was lucky enough to go to a doctor at that time who understood—he was part of the gay community—who understood the situation I was in. That resulted in me getting the health care I needed and moving forward with my life in a healthy and productive way. But I would be very concerned with this legislation, that people

who are in that situation, who are very, very vulnerable at that point in their health care, end up with doctors or healthcare providers who do not provide the care that they need, who do not refer them on to places that they should, and possibly could have a catastrophic effect on their health.

**Mr ALEX GREENWICH:** Just to follow on the conversation that we have been having, obviously you are not saying every religiously based or faith-based organisation or religious doctor would; you are saying there are some that could potentially weaponise aspects of this legislation to impact vulnerable groups.

**Mr MACKIE:** I certainly would not say all people would do this; that is not what I was implying. I probably would not use the word "weaponise". I would suggest that somebody in that very vulnerable situation is very susceptible to what they are being told, especially from a health professional, when they are seeking what is a level of very important health care, and to be treated in a way that could jeopardise that could be devastating to their lives.

**The Hon. MARK LATHAM:** Dr Roach, you mentioned earlier on it is permissible to have a conscientious objection as a doctor. Does that not bring in religious beliefs?

**Dr ROACH:** Yes, and it has consistently been RANZCOG's position that we respect—in fact, I could almost quote it—the right of our members, or really any doctor or a healthcare provider, to conscientious objection, recognising at the same time that they have an obligation: they have an obligation to provide health care, they have an obligation to provide health care in an emergency and, if they are unable to provide that health care, then they have an obligation to ensure that the patient is able to access the health care that they have a right to seek.

**The Hon. MARK LATHAM:** So this bill does not change that, does it?

**Dr ROACH:** I am going to defer to my colleague just to understand that my interpretation—not as a lawyer or a legislator—is that the risk with this bill is that it elevates religious belief beyond the provisions that are already there. Therefore, there is a risk that religious belief could, in a sense—I am using the wrong language—forgive or allow the practitioner to not fulfil their obligations.

**The Hon. MARK LATHAM:** But if they have got a conscientious objection, that is allowed for at the moment, is it not?

**Dr ROACH:** No. Ms Hamblin?

**Ms HAMBLIN:** Our concern around the impact of this bill, if it becomes law, on conscientious objection is that there is already a very well established set of professional guidance and principles around conscientious objection, as Dr Roach has just outlined and RANZCOG supports that and upholds the right of its members to exercise the right of conscientious objection, subject to those safeguards that exist in professional standards and in accepted guidelines. Now this bill does not recognise those guidelines. It would replace those guidelines with an alternative, much less nuanced, much less accommodating set of provisions. And it would make it very hard to enforce professional standards against a medical practitioner who might not exercise his or her right of conscientious objection in accordance with the accepted professional standards that we have at the moment.

**The Hon. MARK LATHAM:** Doesn't the bill simply stop you from sacking or disciplining your membership on the basis of their religious beliefs? Why is that a bad thing? Why are you stopping that kind of discrimination?

**Dr ROACH:** The risk is that if they have exercised their religious beliefs and have not fulfilled their other obligations that is not acceptable. The other obligations come first. Religious beliefs cannot trump the obligation of a health practitioner to provide care in an emergency, to provide appropriate care or to make sure that the patient is able to access the care that she needs.

**The Hon. MARK LATHAM:** Do you accept that is written into New South Wales statutes, most particularly the abortion bill and the Anti-Discrimination Act does not override those statutes?

**Dr ROACH:** Well, okay, that is the point I think obviously that we are differing. Our interpretation of a bill that has not yet been legislated is that the risk of the bill is that it would override it or it would allow it.

**The Hon. MARK LATHAM:** I can assure you it does not. The Committee has sat through two days of hearing now. I am sort of reaching the conclusion that the exaggerated concerns about the bill come down to the fact that certain people who do not like Born Again Christians, in particular, and think that these nasty people are going to pick on the vulnerable, particularly in the gay community, and that really is the basis of the objection, is it not?

**Dr ROACH:** That may be your assertion, it is certainly not the position that we hold. As my colleague said before, our membership is a broad church and we respect the rights and opinions of many, many people. We certainly have not come here to offer an opinion, or criticise, any faith-based group at all. Our concern is that in some way that this bill may—

**The Hon. MARK LATHAM:** Empower the nasty people to do nasty things.

**Dr ROACH:** No, those are your words, they are not mine.

**The Hon. MARK LATHAM:** That is the only interpretation that can be put on your—

**Dr ROACH:** They are your words, not mine.

**The CHAIR:** The Hon. Mark Latham will you allow the witness to conclude his answer, thank you.

**The Hon. MARK LATHAM:** Who's the bigots here?

**Ms JENNY LEONG:** Point of order: The Hon. Mark Latham should withdraw that comment. It was offensive to the witness. It was offensive to people in the room and I do not think it was constructive and in line with the request that you made about Committee members that we behave in a way that is respectful to other members of the Committee and to Committee witnesses.

**The Hon. MARK LATHAM:** I find it hard, if conscientious objections are permissible and there is no firm evidence of anyone doing anything wrong what other conclusion can you reach based on a logical reading of the evidence before us.

**The CHAIR:** Excuse me, Mr Latham, would you talk through the Chair. There is a point of order and I am giving him a chance to respond to the point of order.

**The Hon. MARK LATHAM:** I will move on to my next question, which is to Dr Koonin.

**Ms JENNY LEONG:** To the point of order: My point of order was that you request that the Hon. Mark Latham withdraw that offensive comment.

**The Hon. GREG DONNELLY:** To the point of order—

**The Hon. MARK LATHAM:** You sit here all the time accusing people of bigotry. That is your life's work.

**The CHAIR:** Excuse me. The time has expired for questions.

**The Hon. MARK LATHAM:** That is your life's work, accusing people of bigotry.

**Ms JENNY LEONG:** Do not start.

**The Hon. MARK LATHAM:** It comes back at you and you're in tears.

**The CHAIR:** Members, excuse me.

**Ms JENNY LEONG:** The fragility is beyond belief.

**The CHAIR:** Mr Latham and Ms Leong, I will have quiet. Mr Donnelly, did you have a point to make?

**The Hon. GREG DONNELLY:** I was going to speak if the member is pressing her position?

**The CHAIR:** Ms Leong, are you pressing your point of order about the Hon. Mark Latham withdrawing an assertion he made?

**Ms JENNY LEONG:** I was not aware that I needed to press a point of order. I raised a point of order and then I believe that you hear comments in relation to the point of order and you make a ruling on that point of order. I do not believe I need to press it again.

**The CHAIR:** You are asserting your point of order.

**The Hon. GREG DONNELLY:** To the point of order: The comment of the Hon. Mark Latham was just a comment of rhetorical reflection in that we have heard over the course of the previous hearing day, this morning and indeed again this afternoon some less than clear responses from witnesses to some very specific questions directed to them. To the extent that the Hon. Mark Latham made that rhetoric comment, "Who's the bigot?" I do not think he was directing it to anyone in particular sitting at the end of the table.

**The CHAIR:** The Hon. Greg Donnelly will make his supporting comments briefly.

**The Hon. MARK LATHAM:** Yes, I was. I was directing it at those who want to kick people out on religious grounds and no other supposition. My word I was.

**The CHAIR:** I will have quiet from the Hon. Mark Latham. We have had a long day.

**The Hon. MARK LATHAM:** They are the reason we need the bill.

**The CHAIR:** We have witnesses here who we need to show respect to. The Hon. Greg Donnelly.

**The Hon. MARK LATHAM:** My word I was.

**The Hon. GREG DONNELLY:** If he wants to clarify that he directed it at the four people at the table that is fine, but I interpreted it as a general comment.

**Ms JENNY LEONG:** He just pointed at them as he said it.

**The CHAIR:** Excuse me, Ms Leong, I just want to hear from the Hon. Greg Donnelly.

**The Hon. GREG DONNELLY:** As a general statement of frustration, that was my sense of the comment. In that context I do not think there is any basis to require him to withdraw the statement, none at all.

**The CHAIR:** The Hon. Mark Latham I am giving you the opportunity to withdraw the comment that you made.

**The Hon. MARK LATHAM:** I will in the context where The Greens have made a life work out of calling people bigots.

**The CHAIR:** The Hon. Mark Latham has withdrawn that comment.

**The Hon. MARK LATHAM:** And when someone says it about another group who do not like nasty people and all of a sudden it is crisis. How much hypocrisy can people stomach?

**The CHAIR:** I want quiet amongst Committee members. When you make comments or you take points of order you have to do that through me. I expect that respect from all of you. I will not have commentary going between you. We have limited time with these witnesses who have willingly given up their time to speak to us, to share the knowledge with us. I would like to complete this session with them with greater respect to them and to our respected members around the table.

**Ms JENNY LEONG:** My question first of all is to the representatives from ACON. Thank you for being here. Will you speak to the potential risks and harms to the LGBTIQ community who also have

**The Hon. GREG DONNELLY:** Q+.

**Ms JENNY LEONG:** Chair, could I request my time starts again given the attempt of the Hon. Greg Donnelly to interrupt.

**The CHAIR:** The Hon. Greg Donnelly will refrain from side bars in the way that I am asking every member of the Committee here.

**The Hon. GREG DONNELLY:** I do not think the member is being comprehensive enough in her description of the community. It is LGBTIQ+.

**Ms JENNY LEONG:** To be clear for the record I was actually referring to the lesbian, gay, bisexual, trans-gender and queer communities that ACON specifically references in the context of its submission. I want to ask if you could talk about the potential health and mental health risks and harms, particularly to members of those communities who are also people of faith. How do you see that playing out in terms of the harmful debates and discussions that happen around this inquiry and bills such as this?

**Dr KOONIN:** Thanks, Ms Leong, and clearly you are right. There is often an intersection between people of faith and members of our communities. We are still trying to seek a balance. But what we know—and this is to put on the record and I would imagine that members know much of this already—first of all our communities have significantly higher rates of mental health issues than the national average and we are happy to provide data around this; data on extremely high rates of suicide, particularly around trans and gender diverse members of our community. I thank the Gender Centre and the Parents for Transgender Youth Equity for their submissions and for highlighting those issues. Second, we know that religious anti-LGBTQ—Mr Donnelly I will allow you to add the + if you like—is predictive of high levels of anxiety.

**The Hon. GREG DONNELLY:** I think it is necessary.

**Dr KOONIN:** Also of high levels of stress and shame, more instances of physical and verbal abuse and more problematic alcohol use. And again we are happy to provide data on that. Thirdly, and this is back to some

comments made by my colleague Mr Mackie and others, we know already that LGBTQ people face significant barriers in accessing appropriate health services and often that is caused by perceptions of prejudice and sometimes it is caused by instances. I am happy to provide some direct quotes from people's experience anecdotally but in terms of data, we have recently consulted with our community on precisely this issue.

Approximately one-third of our community do not access health service because they are uncertain that they would receive an audience with a health professional who would understand their life or health needs or because of fear of judgement. Our concern is that a bill like this, structured the way it is, would make it harder for those communities who are already having difficulty accessing appropriate health care to do so. I say this in the context of wanting to ensure that of course people of faith are protected from discrimination too but we are aiming to seek the appropriate balance and we are not sure this bill achieves that.

**Ms JENNY LEONG:** Thank you, Dr Koonin. If you wanted to provide the additional first-person experiences on notice that is completely acceptable for you to make an additional submission to the inquiry. In relation to RANZCOG I particularly want to say thank you to you both for the advocacy that you do and the work you do to make sure that women across the State are able to access the health care that they require and need as part of their participation in life. I want to ask you specifically around concerns that you had in terms of professional standards and also the potential risks to professional licensing bodies not being able to discipline members if they did not comply with certain things as a result of this bill coming into effect, because of the fact that they did not result in an imprisonable offence.

**Dr ROACH:** I think the answer to that question goes back to the answer that I was trying to give before, which I do not think was a bigoted answer. It was actually just to say that we believe that our members, that doctors in general, that all healthcare professionals have a level of obligation and that that level of obligation to care for the community is clearly our remit. That is what we do. That is why we are here. Religion may preclude you from participating in certain aspects of health care but it does not give you permission not to provide that health care or to provide access to that health care.

Our concern is that if a bill in some way gives permission for that aspect of belief to prevent that patient—because this is actually who it is about; it is not about the practitioner, it is about the patient—from receiving the health care that he or she deserves then that is unacceptable. That is what our concern is. Then if we come in as a professional standards body and say, "There were the standards that we wanted you to uphold," but then the practitioner is able to rely on a bill that actually gives them permission to have practised in a way that we consider to be inappropriate then you have a conflict between those two things and the bill would actually give precedence to the former.

**Dr JOE McGIRR:** I welcome all of the panellists and thank them for their input. My question is to Dr Roach and Ms Hamblin from RANZCOG. Dr Roach, you gave an example of care at the Mater Hospital of Sydney, where I think you said you work. I think the gist of what you said was it is possible for a woman to be admitted without being aware that they would not be able to access a termination service. Is that correct?

**Dr ROACH:** Correct.

**Dr JOE McGIRR:** Are you saying that the medical practitioner who is responsible for their care would not have made them aware of that?

**Dr ROACH:** Yes, that is what I am saying.

**The Hon. MARK LATHAM:** He is saying that, yes.

**Dr JOE McGIRR:** Is that not quite a significant breach of professional standards in terms of consent?

**The Hon. GREG DONNELLY:** Hear, hear!

**Dr ROACH:** No, because I think that it depends on whose responsibility you believe it is to be. I mean, a patient booking into a hospital books into the hospital, so then I would argue that that is actually the institution's responsibility.

**Dr JOE McGIRR:** But they book under the care of a practitioner.

**Dr ROACH:** But they do that prior to even booking in with a practitioner or having seen the practitioner. You can often make your booking prior to that visit.

**Dr JOE McGIRR:** You do not think it is the responsibility of the practitioner to inform the patient of that?

**Dr ROACH:** I think we are splitting hairs. I think that the point that I made is that I think that it is—

**Dr JOE McGIRR:** It is actually an important issue.

**Dr ROACH:** I think it is the responsibility of the institution in that particular case.

**Dr JOE McGIRR:** That is interesting. I would certainly argue that the institution has a responsibility but I actually think the treating practitioner has responsibility in that regard.

**Ms JENNY LEONG:** Point of order: I just wondered whether Ms Preston wanted to make a point of order about Mr McGirr sharing his own personal views on things.

**The CHAIR:** Ms Preston?

**Ms ROBYN PRESTON:** Actually I do not think it was his personal view. He is a professional. We have got doctor to doctor and I am standing back respecting both your comments. Far be it from me to judge anyone.

**The CHAIR:** Dr McGirr, please proceed. Members will come to order.

**Dr JOE McGIRR:** Dr Roach, one of the key issues in the submission from RANZCOG is a concern that as a result of this bill there will be a risk that medical practitioners will not provide emergency care. That is stated a couple of times in the submission. You are not aware of that happening anywhere else in Australia where religion exists as an element of anti-discrimination laws. RANZCOG is a national organisation. Are you aware that inclusion of religion as an element of anti-discrimination has led to any situations where emergency care has not been provided?

**Dr ROACH:** I am not aware.

**Dr JOE McGIRR:** I want to point you to section 3 in the proposed legislation because I think the issue you raise, which is one of the importance of health care and the issue of balancing a range of rights, is important. Section 3 makes reference to a number of international covenants and in particular points out situations in which there may be required to be limitations on religious freedom and in fact includes reference to health and public safety in that.

**Dr ROACH:** I am sorry, did you ask me a question?

**Dr JOE McGIRR:** Have you read that?

**Dr ROACH:** I can see it.

**Dr JOE McGIRR:** Let me put the question this way: In line with your submission, you do not think that that is sufficient protection for this risk, doctors not providing emergency care or hospitals not being able to compel them to provide emergency care?

**Ms HAMBLIN:** Perhaps I could respond to that point. The point we made in our submission is that we have in Australia and in New South Wales very specific professional guidance tailored to our context and our healthcare system that sets out what we would say is accepted as a very appropriate balance between a doctor's right of conscientious objection and the importance of patients receiving the health care they need. We would not be persuaded, I do not think, that if you make that guidance less applicable by legislating around it in a different way that pointing to some international covenant would be an adequate substitute. We think that the existing professional guidance is balanced and appropriate and we are concerned that this legislation would confuse and weaken that professional guidance.

**The CHAIR:** That is the end of time. Thank you very much, Ms Hamblin. I appreciate that. We have seven more minutes of the scheduled hearing. Mr Donnelly?

**The Hon. GREG DONNELLY:** I address my questions to RANZCOG. With respect to your submission, I take you to page No. 1. If we go to the last sentence of the third paragraph, and I know this has been drawn to your attention already, but please bear with me, you say, "If passed, it will have serious consequences", "it" being the bill. So you are saying it will have serious consequences. Go over the page to page 2 and your point 3, you say, "The provisions covering religious ethos organisations will jeopardise access." Go over to the next page, page 3. You say at point 4, "The bill will interfere with the enforcement of professional standards in health care". On what basis can you be so explicit and say "will"?

**Dr ROACH:** This point was made before and if it is of any comfort we are very comfortable with changing the word "will" to "may".

**The Hon. GREG DONNELLY:** Well, they are your words, not mine. I am not looking for any comfort at all. This is signed by yourself as the president of RANZCOG, and it critically contains the word "will" three times. So what is your position?

**Ms JENNY LEONG:** Point of order—

**The CHAIR:** I am allowing the question. Dr Roach, please address the question.

**Dr ROACH:** I am very happy to accept the point that you are making, and I am very happy to use the word "may" to illustrate the same point. I agree with you, "will"—particularly with legislation that has not yet been enacted—is an inappropriate word. This is the concern that we have, and we used the word "will" when we should have used the word "may". We would be very happy to use the word "may" instead.

**Ms JENNY LEONG:** As one of the members alluded to earlier, another witness did raise a number of criticisms of the RANZCOG submission. I put on notice that when the transcript is available, if that can be provided such that you are given the opportunity to be able to respond to those comments. Also it would be helpful for you to provide—and I am happy for you to take this on notice—details about RANZCOG as an organisation, including the level of membership and the reach and scope of the organisation in terms of your peak body status.

**Dr ROACH:** Thank you.

**Dr JOE McGIRR:** I have one more question for Dr Roach and Ms Hamblin. You made a statement on the first page under section 1 that says:

It is not appropriate that the legal protection against discrimination given to these groups should be any less than that given to people who hold particular religious beliefs.

Why do you think that would be the case with this proposed bill?

**Ms HAMBLIN:** Simply because there are provisions in this bill that are not mirrored by the protection that exists in the Anti-Discrimination Act in relation to the other protected attributes. For example, the religious ethos organisation provisions.

**Dr JOE McGIRR:** I just want to clarify—does that statement take into account the fact that there is a specific clause in section 3 that attempts to address this issue of balance in competing rights?

**Ms HAMBLIN:** Yes, it does take that into account.

**Mr ALEX GREENWICH:** Following on from the Hon. Greg Donnelly's questioning, would you say that the legislation will create opportunities where a person can be discriminated against? I draw your attention particularly to 22M. I might start with ACON, if that is okay.

**The Hon. GREG DONNELLY:** Point of order: The discourse I had with Mr Roach was over some wording in his organisation's submission. It had nothing to do with ACON. The member is taking my question and conflating it across two organisations.

**The CHAIR:** I am going to rule on that point of order and allow Mr Greenwich to ask the question.

**The Hon. GREG DONNELLY:** He is conflating my question directed to one organisation to two.

**The CHAIR:** I have made a ruling. Mr Greenwich, please proceed.

**Mr ALEX GREENWICH:** I have asked the question, and I am looking forward to an uninterrupted answer.

**Dr KOONIN:** You never know in the future what is going to happen, but there is a high probability that the legislation as phrased will increase barriers and antipathy between religious organisations and, in this case, LGBTQ communities at a time when we have worked really hard to build relationships. I think that we are all trying to protect people on the basis of religion and to find a balance between them and other marginalised groups, but we need to act very carefully if we do not want to create division at the very moment when we are building bridges.

**The CHAIR:** Thank you very much for your time and for the spirit in which you have come to present your testimony. I thank Dr Roach, Ms Hamblin, Dr Koonin and Mr Mackie for making your submissions that led you to being here today, and for answering the questions with the courtesy that you did.

**(The witnesses withdrew.)**

**The Committee adjourned at 16:55.**