

REPORT ON PROCEEDINGS BEFORE THE

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

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

At Macquarie Room, Parliament House, Sydney, on Friday 6 November 2020

The Committee met at 9:10

PRESENT

The Hon. Gabrielle Upton (Chair)

Legislative Council

The Hon. Greg Donnelly
The Hon. Scott Farlow
The Hon. Sam Farraway
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: Welcome to our two witnesses this morning. Thank you for taking the time to submit to our inquiry and to appear here today. I want to formally welcome Archbishop Anthony Fisher, who is the Archbishop of Sydney, Catholic Archdiocese of Sydney. I note that from here on in, Archbishop, I will refer to you as "Your Grace"; I understand that is how we should refer to you. The Committee are aware of that. I also introduce two of your advisers, who were good enough to come along today. I gather that Mr Kieren Walton and Ms Monica Doumit are here with us. I also want to introduce Archbishop Najarian, Primate of the Diocese of the Armenian Church of Australia and New Zealand. Welcome, Your Eminence. We will refer to you as "Your Eminence" from here on in; I understand that is what we should do. I also want to introduce your assistant, Mr Nishan Basmajian. Thank you for joining us today.

We have a large Committee. It is the largest Committee currently sitting in the Parliament, and it is a Committee that has a large membership because it is an issues and values-based inquiry. I want to outline how we will run proceedings. Because of the number of members, we have decided we will not take opening statements. We will jump straight to questions. The way we are working that is that each member has an opportunity to ask a question and have it answered in roughly five minutes. That is a way that we can equally spread the time. There will be an alarm at four minutes; please do not think that you have to stop when you hear that. It is just to help me to keep time. Of course we will allow you to complete what you are saying, out of respect for your contributions. Some of the members may forgo their time. We have tended to end up with somewhere between no time or five or 10 minutes at the end, where members can have another question.

ANTHONY FISHER, Archbishop of Sydney, Catholic Archdiocese of Sydney, sworn and examined

HAIGAZOUN NAJARIAN, Primate of the Diocese of the Armenian Church of Australia and New Zealand, Armenian Apostolic Church of Holy Resurrection, sworn and examined

The CHAIR: Thank you. The first question is assigned to Ms Preston.

Ms ROBYN PRESTON: Thank you, Madam Chair. My question today is to Your Grace. I wanted to refer to your submission, just above section 22P. I am referring to section 22N: "Discrimination against applicants and employees". Your submission says that the rights of religious freedom are under threat from:

... the chilling, self-censoring effect that the fear of negative action from employers has on believers across the state ... A strong protection for religious activity outside the workplace contained in anti-discrimination laws is a significant step at redressing this.

Would you like to further comment on that, please, Your Grace?

Archbishop FISHER: Thank you. What we have in mind here is the cases we have heard of from different parts of the country, including our own part of the country—and overseas—of employees who feel scared to express themselves even outside the workplace because what they have put up on their Facebook page or tweeted to their friends is held against them by employers. We have had cases of people losing their jobs for expressing their points of view, or their careers damaged in some way, or their relationships in the workplace affected. Our suggestion is that, for the purposes of maintaining people's freedom of speech and their feeling of being citizens who are given a space to have a different view, we should in our law allow that people, especially outside their workplaces, can express views without being punished for that in their workplace when it is discovered by their employer or colleagues.

Ms ROBYN PRESTON: Thank you. Your Eminence, would you like to make a comment in that regard?

Archbishop NAJARIAN: I have nothing to add to what the Archbishop said. I totally agree with his views.

Ms ROBYN PRESTON: Thank you. Your Grace, I am just looking at your comments in relation to the protection of religious ethos organisations against discrimination in the provision of services. I ask you if you would like to expand on that, please?

Archbishop FISHER: Sorry, what page was that on?

Ms ROBYN PRESTON: That is after 22Z. "Other matters", towards the end—back page. Could you elaborate on that, please?

Archbishop FISHER: The sorts of other matters we touched on there is the question that has been raised by some critics of the bill—or of even the idea of legislation in this area—that activities they would characterise as commercial by a religious organisation should not be covered by such a bill, but other activities of organisations that are religious inspired but not actually the church should not be covered by anti-discrimination.

Ms ROBYN PRESTON: Are you talking about things like halls, cafes and care centres?

Archbishop FISHER: It could be cafes or the bingo hall at the church. It could be the St Vincent de Paul shop or even the whole St Vincent de Paul organisation, which is a Catholic organisation. But some people would say it is not the church; it is just a charity. We are saying that part of freedom of religion is the freedom to manifest your religion. That is very clear in all the international instruments. Religion is not just something you have to keep inside your head and never express or manifest. People manifest it in things like the institutions and organisations they set up—schools, hospitals, welfare services, parishes and so on—and that will often include operations that provide goods and services. Some people might say, "That is more like an industry or more like a shop." But we would say that something like the second-hand goods shop that St Vincent de Paul use in order to raise the funds to feed the homeless from their soup vans here in Sydney, or the parish that has a hall that they have bingo in, in order to raise funds to send to the Third World—that those are actually deeply religious activities and should be covered by anti-discrimination laws as much as the worship and other activities of the churches.

Ms ROBYN PRESTON: Thank you for explaining that. Thank you, Chair.

The CHAIR: Mr Singh?

Mr GURMESH SINGH: I will cede my questions.

The CHAIR: Ms Cusack, do you have a question?

The Hon. CATHERINE CUSACK: Yes, I have a question. Thank you very much. I would like to thank the witnesses. The issue is people being punished in their workplaces for actions that have been taken outside the workplace. I live on the far North Coast and I have been wanting to ask the church about this for years. We had a popular school principal who got divorced and remarried. He had applied for an annulment but the annulments of a previous marriage, as you know, take many, many years in the Catholic Church. He was regarded as an excellent leader in every way, but because he got remarried he then got sacked from his position. In a sense, it seemed to us that something he had done outside of the workplace—he was being punished for it by the church inside the workplace. So the argument that you are putting seems inconsistent with the way the church itself is acting. I wonder if you could respond to that.

Archbishop FISHER: If I may: I think that there are situations where your life outside your work is relevant to your work. So, if a footballer outside his football world, says, "I hate football", or, "I think the NRL organisers are all corrupt and in fact AFL is a better sport." You might say that his opinions he is expressing there do bear upon his employment as a professional footballer. So too a person who is a leader in a faith community, the values and beliefs that he expresses even outside his workplace, or she expresses, would bear on their work as a leader in a faith community. So sometimes it is relevant to their work. In other situations I would say clearly it is not. So a footballer who wants to express opinions on, for instance, religion outside his workplace I think should be free to do so and a religious leader that wants to express their opinions on football outside their workplace should be free to do so. It should only be a matter that goes to employment if it actually bears upon the purpose for which you are employed and perhaps the business of the employer.

Employers should not regard themselves as owning the souls of their employees as if they are free to control their minds and their speech in every part of life. Coming to work for someone is not becoming their slave or offering them your whole heart, mind and soul. You should be free to have views outside your workplace and express them and live them in your own way. It only becomes relevant, I think, to an employer like a school authority if it is going to bear upon the job for which you are employed. I would say a Catholic school principal is employed to be a representative of the Catholic Church. Then you expect it to live and stand by all the values of the Catholic Church.

The Hon. CATHERINE CUSACK: But the Catholic Church has the right to sack somebody because they get married. Is that what you are saying?

Archbishop FISHER: What I am saying is if, according to the beliefs of that particular church, that person is not validly married, is living outside of marriage and particularly if that becomes known in the school community and to the children, then that can really undermine their witness to the values of that faith community. In fact we know we have all sorts of people teaching in our schools, all sorts of children enrolled in our schools from all sorts of backgrounds and in my experience these things are usually handled very sensitively on a case-by-case basis. There is not a kind of Inquisition out there trying to drive people out of their employment or children out of their enrolment. I think in general we do everything possible to keep our good staff and to keep our students and to make the space for difference. We have children of all different religious backgrounds in our schools and teachers of all different religious backgrounds and moral positions in our schools. It is only when this becomes an issue of undermining the witness they give to the mission and identity of the school that it might become an employment issue, and I think that is very rare. I do not know the case to which you are referring but I think that is very rare.

The Hon. CATHERINE CUSACK: The case happened in Lennox Head. I will not say the name of the principal but, to give you this feedback, the school community was not at all concerned that the principal got married. I think what they were really shocked and dismayed by was that he got sacked by the church. I guess if you are saying that you are trying to serve the best interests of the school community, that was not their perception at all. The consistency here and where you draw the line about somebody's personal life, that they should not be punished for it in their work life, it just seems very contradictory and certainly to the community.

Archbishop FISHER: I am sorry, I do not know the particular case. But I would say that if, as a religious leader, in my private time I was doing something very contrary to the teachings of my Church and particularly if that became known in my community, that would undermine my ability to stand for the things I am supposed to stand for as a religious leader. I would put school principals alongside parish priests in terms of their leadership of a Christian community. In fact, often our school communities are bigger than our parishes, so they are a very important part of the people who represent our God and our faith.

The CHAIR: Thank you, Your Grace. I have a question. It is directed to both Your Eminence and Your Grace and it relates to the definition of the religious ethos organisations. The comments made in the submission are that the definition needs to be insulated from judicial activism, which is an observation that a number of other submitters and witnesses have made as well. I just want to be clear about the change that you are suggesting in

that definition. Do you have a copy of the submission handy? If not, we can hand it to you, if that is of assistance? Your Eminence, would you like a copy of the submission? Your Grace and your Eminence, can you both hear me?

Archbishop FISHER: I can. I think for His Eminence's sake, if you could speak up. Thank you.

The CHAIR: Okay. Of course.

Archbishop NAJARIAN: I cannot hear you, sorry.

The CHAIR: Of course. We will speak up. I apologise for that. That is not anybody's intention. My question is around the definition of the religious ethos organisation and it is directed to either or both of you. My question is in relation to your comments on page 10. The point that has been made here is that to protect the definition of a religious ethos organisation from judicial activism—a point that has been made by other submitters and witnesses to us—you are suggesting a change to the bill. I had just want to be clear on the addition. I think it is a couple of words that are in there and if you would not mind explaining how you think that might better protect the kind of organisations the bill is seeking to protect. The definition is in the second paragraph from the top of page 10 and I think the different words that you are adding are "conducted in accordance with" and I think the additions are "... for the furtherance of, the doctrines, tenets, beliefs or teachings of a particular religion". I am keen to understand how that prevents the judicial activism that you are wishing to address there.

Archbishop FISHER: If I could try to answer that—and I might have to get back to you with a fuller answer to understand fully what we are getting at.

The CHAIR: That is fine, thank you. Your Grace and Your Eminence, you can always take questions on notice, if that is of assistance. Thank you.

Archbishop FISHER: Yes, so I might write back to you with some more thoughts on this. But it strikes me that some activities of religious organisations are with a view to furthering the purposes of that organisation and they will understand that. Those organisations themselves will know why they are doing that. What we do not want are tribunals deciding either what our faith is—what our tenants and our faith are. We know that there have been cases where that has happened in this country or whether the activities we are engaging in are intended to be in furtherance of promotion of that faith. So it is one thing already to have tribunals deciding whether particular activities by a religious organisation are in accord with the faith—and even that, I think, is deeply problematical because it is only the faith group themselves that are going to be the best judges on that—but there would be other things that, rather than being in accord with the faith, are with a view to furthering the faith.

It might be, for instance, things that you publish in the public sphere. We think, for instance, of a case of an archbishop that published a pamphlet about marriage that led to his being dragged before a tribunal and accused of discrimination. He was publishing that with a view to furthering the Catholic view of marriage, or his church's view of marriage, and we do not think tribunals should be seeking to judge or interfere with that any more than they should be seeking to judge whether this really is the Catholic faith about marriage.

The CHAIR: Thank you, Your Grace. Your Eminence, did you have a comment on that?

Archbishop NAJARIAN: I think that the Church must have its right to express its views on these kinds of issues obviously for its own people. When an archbishop declares a statement about marriage, it is for his own people rather than imposing their understanding of marriage to others. That is why it is not brought to civil court in that case. I agree with that.

Mr JIHAD DIB: Good morning, Your Eminence and Your Grace. Nice to see you again.

Archbishop NAJARIAN: Thank you.

Mr JIHAD DIB: I have a couple of comments. I thank you for a comment on page 10, and I think that it has come up in different discussions. It is just under section 22M around the fifth paragraph down, where you add that it:

... is important in the recognition of the freedom of religion as a right in and of itself, rather than characterising it as a licence to discriminate, as it often appears ...

I thank you for that because some of the discussion points have been around the fact that what this potentially becomes is a licence to discriminate, but what I hear quite regularly, and what I am comforted by, is the fact that freedom of religion means that you do not then use that to discriminate against others. This is about trying to create a sense of equity and equality. I have two more questions around your thoughts on the missing piece potentially being religious vilification or vilification based on religious grounds. Also something that has been really clear over the last few years is a much stronger link between all the faith groups. I know that you have been very heavily involved in that, Your Grace. That indicates to me that there is obviously a lot of common ground in

the desire for religious acceptance and religious belief. Would you mind answering that question, particularly about religious vilification and provide any suggestions for the Committee. Secondly, could you comment on the importance and the great work that has been going on in terms of the interfaith connections that have been established that were not there 15 or 20 years ago?

Archbishop FISHER: If I could take the second question first, I think that you would find that on many issues like this one there would be a common position between pretty well all the Christian churches and the different varieties of the Muslim and Jewish faiths, and often also we will have joining us groups of Hindus and Buddhists and others. So this is quite a development in our lifetime, because we know that there was a time when such groups—even different Christians—did not work together or take a common position on things. On many of these things, we very well understand that we are all in this together and that any prejudice against religion or belief, or any discrimination against any of us on the basis of our religion, is a threat to all of us and a threat to religious liberty across the board. I can say with great confidence that I am speaking today not just for the Catholic Church in Sydney and all the Catholic dioceses of New South Wales but that I would have with me the leaders of pretty well all religions in this State. I will not claim complete unanimity, but it is a very high degree of common purpose. That is a beautiful development in our time and it is a tribute to Australia, because it would not be true everywhere in the world—that we stand together on things in the way that we do here.

On the question of vilification—and let me say that I am no stranger to religious vilification myself, and to anti-Catholic or anti-Christian sentiment. It is often quite overt in our community. I would say that anti-Catholic clergy sentiment is also quite overt in our community too, so I well understand that people of other faiths, as well as my own, have experienced this and feel this deeply. I also recognise that it is a complex balance for a democracy to work out how to respect people's religious sensitivities—the things that they find hurtful that go right to the heart of their identity that make them feel attacked—and discourage hate crimes and stop people whipping up prejudice and encouraging violent behaviour through vilification all the while allowing the space for the free exchange of ideas.

Some people might regard a religious leader saying "I believe my religion is right" as somehow vilifying all other religions, or their religion. Particularly if he says, "Well, I think my version of Christianity is right or better than some other version of Christianity. I think that my version of Islam is better than some other version of Islam." Others will hear that as vilification. What we are trying to do is have the space for people to be able to express their religious beliefs but at the same time say as a community, "Can we not respect each other and stop saying things that are hurtful to each other?" I suspect that is why this bill has not gone into vilification in a big way, because it brings with it a whole complex set of additional issues that very possibly need to be addressed but may be addressed another day.

The Hon. GREG DONNELLY: Could I take you to your submission, particularly to page number three. This leads into my question that I will direct to both of you. The short sentence in paragraph 3 talks about affiliation and significantly paragraph 4 talks about the Catholic Church's activities, which I would colloquially describe as outside the four walls of the church, if that is respectful enough. You have the people who attend church as observants, and you have the activities inside the church and then there are activities outside the church that the church is directly involved in running and supporting, either directly or indirectly. Your Grace, in an answer to one of the earlier questions I thought that you made a very telling point with respect to the matter of freedom of religion. You said that it is important to include the freedom to manifest one's faith. I presume the demonstration of activity in paragraph 4 is an example of the Catholic Church's manifestation of its faith.

We are dealing with a particular bill as the subject of this inquiry, but in my questioning to various witnesses I have gone back to the existing New South Wales Anti-Discrimination Act and made some specific reference to what are called the current exemptions in the Act, which have been there for quite a long period of time. I do not need to go through all of them in significant detail, but if you wish to follow up on them in your answers later on to my question that is fine. In general terms, there is an exemption that provides for faith-based schools the ability to essentially determine which students they enrol and who they ultimately employ as employees of those institutions. The Hon. Catherine Cusack in her contribution earlier gave an example and a context there. A number of the witnesses to this inquiry thus far who do not support the legislation that we are looking at have said quite explicitly that they support the complete or substantial removal of the existing exemptions in the Anti-Discrimination Act. It is a long lead-up to my question, which is: With that in mind, would you like to comment on the impact that may well have not just on the Roman Catholic Church but on the faith traditions in the State?

Archbishop FISHER: Thank you. If I might begin by saying: I think it is a remarkable thing that would probably surprise many people in New South Wales that currently it is illegal in this State to discriminate against the person on the basis of age, race, disability, sex, sexual orientation or gender identity, but not illegal to discriminate against them on the basis of their religion. That would be very surprising to many people. They would

agree, most people, that religion should be in there amongst the list of attributes. The bill seeks to correct that and bring us into line with the other States of Australia, with the international law to which we are signatories, and so on. But just including it amongst the list of things does not quite capture all that religious freedom is about because there will be situations where, in order to manifest your religion, you want to have a preference for people of that religion.

If I am going to ordain Catholic priests, I am going to want them to be Catholic. If I am going to employ Catholic teachers, I am going to want them to stand for a certain set of beliefs and ethics. They will not all be Catholic, but they will at least be ones who are willing to embrace that mission and speak up for it. And so, I think it is reasonable not just to have a provision that says "no discrimination on the basis of religion"—though that seems, to me, a no-brainer—but also to be saying that freedom of religion requires some more things, including these exemptions, as we framed them here in New South Wales. In many ways I would prefer more positive statements about freedom of religion, but they are presently framed as exemptions, to allow church organisations such as schools to be the Christian communities or Muslim communities or Jewish communities that they are and to have a preference when it comes to choosing their staff in that way.

That is what I think those exemptions aim to achieve. It seems to me it would be a very retrograde step if at the very time we are talking of at last coming into line with other States and with international law in the area of freedom of religion—that some people would like to actually take away the very little protection of freedom of religion that we already have. That to me demonstrates that there are people who really want to strangle religion out of the public square and put it into some kind of box where it is never seen, never heard and never manifested in public. That would be to not respect the great majority of people, who are in fact religious believers. But even if we were a minority it would be a failure of respect of the minority, that should be given the space to have these beliefs and to manifest these beliefs in things like education, health care, welfare and worship.

The Hon. SCOTT FARLOW: Thank you, Your Eminence and Your Grace, for being with us today. One of the tenors throughout this inquiry has been that there really is not a problem in terms of religious freedom in Australia and there really is not any great issue that we should concern ourselves with. That may be the case in New South Wales. But I take it that, from your experience in the Catholic faith in looking at Tasmania and what happened with Archbishop Porteous, you may have some insights into what can operate when religious freedom is in fact a protected attribute under the Anti-Discrimination Act but is in competition with other protected attributes in the Anti-Discrimination Act. We have heard from many who have come before this inquiry that it would just be simple to extend the protected attribute of religious freedom under our Anti-Discrimination Act. I am interested from your perspective, and the experience in Tasmania, as to whether that would be sufficient from your mind to protect religious freedom in New South Wales?

Archbishop FISHER: Thank you. For the reasons I just expressed, I do not think just including it as a protected attribute would be enough to capture all that religious freedom is about. That is why there are other articles of the international covenants, not just the anti-discrimination articles, that address the question of religion; though, religion is included in the anti-discrimination ones everywhere throughout the world and the other States of Australia, but not in ours. That is because there are other things that would be regarded as not an example necessarily of discrimination, for instance, in employment—being against somebody because of their sexuality or their religion—but which are things to do, for instance, with your particular beliefs of your church.

Say, for instance, your church does not believe in providing abortion or euthanasia. That is very live in this country. We think a community like ours can make the space for such hospitals or clinics, knowing that there are other places that will do those things. It is not like there is any shortage of other places to do those things. But a group that has a very particular view of the preciousness of life should have the freedom to express that in the practices of their hospital and not find somebody trying to oppress them—take away accreditation from their staff, take away government funding for their hospital, take away their ability to tender to provide services, and so on. I think simply putting it in the list of non-discrimination might not capture all those different situations that we have experienced.

The Porteous case is one that I feel particularly keenly because Archbishop Porteous and I are ecclesiastical twins. We were ordained as bishops together and have grown up as bishops together. I know that that man was in all good faith simply seeking to express the teachings of his church about marriage without wanting to hurt anybody. I believe in fact he is a very loving man towards people of various sexualities, beliefs and backgrounds, but he wanted to be true to his faith in expressing it in a pamphlet. Again, that is very possibly not a discrimination issue, though someone tried to use anti-discrimination law against him. But it certainly is a freedom of religion issue. An archbishop should be able to publish a pastoral letter to his people expressing the faith of his church.

The Hon. MARK LATHAM: Thank you to Your Eminence, Your Grace and their representatives for their time today and the quality of the very detailed submission. Your Grace, you mentioned earlier the example of a footballer and out of work commitments that might mention religion, which brings us to the specific case of Israel Folau. Israel Folau at the moment is banned from playing Rugby League football in Australia, essentially because of his religious beliefs and habit of paraphrasing the *Bible*. He was a former distinguished Queensland and Australian player, so he is no small fish in that pond. The only other players I can think of banned by the National Rugby League [NRL] are Ben Barba, for bashing his partner at a casino in Townsville; Todd Carney, for urinating in his mouth; and Jack de Belin, who currently faces a rape charge in the Wollongong court. What is your assessment of the Folau ban on religious grounds and do you regard this as a case of religious discrimination?

Archbishop FISHER: Thank you, Mr Latham. I do regard this as a case of religious discrimination. Let me be very clear: I do not agree with everything Israel Folau says. For instance, he says some pretty harsh things about Catholics. He is no great friend to Catholics; I think he does not regard us as Christian at all. But I think as a community we should be able to find the space for an Israel Folau to have his evangelical or fundamentalist Christian views and to be able to express those in a tweet or on Facebook. If we think those are wrong—and I think they are often wrong; even the way he uses Scripture some might think is wrong. We should answer it and have the space for people to give the answers as well, rather than saying that we are just going to censor out those opinions and punish you so severely that we are going to put you with the rapists and wife-bashers that you have pointed to, who have also been banned from their sport. Having a different view on a religious matter and quoting or paraphrasing the Scriptures in a tweet or on Facebook should not be a hanging offence that actually destroys your career and employment.

I can only think that it has been treated this way because there are people who are so aggravated by the quoting of Scripture in public, at least on particular topics, that they are determined to shut up everybody that has such views or that believe such Scriptures, and "We're going to make an example of this guy"—punishing a very prominent person—"so you'll all be quiet about your beliefs." That is very unfortunate because I think we have historically been a live and let live kind of community where we have made space for each other to have different views, to have neighbours who have an entirely different religion to us and they are still our friends, to have people even in our own view who have a different view on this or that or the other thing. We make the space for that but right now there is a trend just to try and shut up people who do not have the current views on different things.

The Hon. MARK LATHAM: Thanks for that. Yesterday we heard a very impressive presentation by Bilal Rauf, representing the Australian National Imams Council [ANIC] in Australia. He was asked the question: Did he regard this bill as consistent with the format, structure and principles of the remainder of the Anti-Discrimination Act. It is fair to say that he said, yes, it is consistent. Is that also the view of the organisations represented on this panel?

Archbishop FISHER: Yes, it is my view. Some people are annoyed that it does more than simply add religion to the list of protected attributes; that it is a bit more positive about freedom of religion. Well, in that respect all it is doing is reflecting international law, the law in many parts of the country and many other countries that recognise that freedom of religion is not just the freedom not to be discriminated against but includes other things such as the ability to manifest your faith in the public square.

The Hon. MARK LATHAM: And would you add to that list of difference the fact that religion, more than some other attributes in the Act, such as disability or marital status or age, provides a unique set of moral code and guidance for a whole-of-life experience for many Christians—indeed, for people of many different faiths—and that makes religion somewhat different to the other attributes currently protected?

Archbishop FISHER: Yes. Look, I think some people would regard things like their sexuality as being as definitive as a religion for them, as central to their identity, and I think we have made a lot of progress in terms of respecting and reverencing that about people. But other things, like that I turned 60 this year, do not make such a big difference to me to where I was in my fifties. So, I think some of these things are more central to who we are and to our ability to enact ourselves in the world and it is more precious to us that people give us the space to be ourselves.

The CHAIR: Thank you, Your Grace. The next question is from Ms Leong.

Ms JENNY LEONG: Thank you so much. I might keep along the same line of questioning, if I may, in relation to the current exemptions in the Anti-Discrimination Act. So, there are currently protected attributes and under the provisions of this bill it would allow—well, it is unclear how it would allow—but it potentially would allow religious organisations to act in a way that would undermine or discriminate against other protected attributes that are currently covered under the Anti-Discrimination Act. You mentioned just then that there is a

need for exemptions in relation to religious organisations—the ordination of priests and other things—and I can accept that that is a reality.

There are other issues around exemptions that happen in relation to activities around social service provision, children attending schools and other things, which obviously we would probably have a point of difference on. Can I ask, given your acknowledgement just then, that people's sexuality and indeed their gender, their sex, their race, and their ethnicity is as much a whole part of their life as is their faith, would you accept other organisations associated with the other protected attributes having similar exemptions to the religious freedom elements of this bill as do the religious organisations have to the other attributes in the Anti-Discrimination Act?

Archbishop FISHER: Thank you for your question. Could I begin with saying I do not think these things have to be a zero-sum game; that we do not have to see rights as rivals and always at war with each other; that often, and in fact I hope usually, we can find ways of reconciling, of giving respect to two sets of value or maybe more than two sets of concerns rather than saying there has to be a winner and a loser.

Ms JENNY LEONG: Indeed.

Archbishop FISHER: So, I think that, for instance, many LGBTI Catholics would say that, "My freedom to be LGBTI and my freedom of religion both matter to me and I want to be able to have both." As I understand it I do not think this law—and I am not a drafter—but I do not think this law touches upon those exemptions to which you have referred. I do not think it enlarges them or shrinks them; they just remain. Whether there should be new exemptions for other areas of life, well that is for people to make the case. But I recognise there could be other areas of life where people would be seeking, again, not just a negative right against discrimination but something more positive, that reverences respect—gives the space for their particular attribute. I think whatever people's views on the marriage debate—and mine would be controversial with many people—but many people would say the purpose of that was to give a bigger space for the expression of sexuality, diverse sexualities. Well, that is an example of where in a sense we have made an exemption or an enlargement of a positive right, not just a change of our list of attributes.

Ms JENNY LEONG: So, can I just follow on from that, if I may, just in relation to the comments that you made just earlier in relation to it demonstrating that some people might want to strangle religion out of the public square. I appreciate that there has been evidence given by others about the potential targeting of religious organisations and religious leaders. I think that there could equally be seen in terms of some of the comments made by footballers or religious leaders around the marriage equality debate or the transgender debate happening in our community that there might be equal desire for some religious leaders to want to strangle homosexuality and transgender people out of the public square and shove them back into the closet. I appreciate you mentioned that you have been the subject of vilification and of harmful views, as have I and as have many others. Surely you believe that there is a space for us to say that some views are harmful, even if they might be the view that person.

The CHAIR: Ms Leong, excuse me. There is about 30 seconds to go of your time.

Ms JENNY LEONG: That is fine, Chair. Thank you. So I guess what I would wonder in this context is we are providing more protection around religious freedoms to be able to say these views but they cause harm to people. Do you believe people should be able to say in a public domain views that are directly harmful for others without repercussion and, indeed, engage in criminal activity that is not punishable by imprisonment, as this bill would allow on the grounds of religious activities?

Archbishop FISHER: Okay. Now you have just put several questions into one, but I will try to get to those that at least that I can remember most immediately. I think on the issue of criminal activity, the reason this bill has said that it is only criminal activity I think it is to stop, for instance, decisions by it could be local councils, various quangos, executive orders and regulations that say something is not legal—like it is not legal to have Christmas decorations up or to put a cross on the top of your church. A council could make such a provision. Councils have in fact at different times forbidden Christmas decorations in public spaces. That is not legal but it is not criminal either. This law says that unless it is criminal, you should let the religion continue to be able to do things like put up Christmas decorations and Christmas cribs. I think that is the reason for the difference. Not everything that is illegal is regarded as so serious as to be indictable and attract criminal penalties.

Ms JENNY LEONG: So given that my time is up, maybe I can get the answer to this question on notice and then leave that other bit to you. What are your thoughts in relation to public health orders around people's ability to congregate in churches during—

The Hon. GREG DONNELLY: Point of order: We have all been told this morning that we have got 300 seconds to ask our questions and receive our answers. Anything beyond that have to be taken on notice.

Mr PAUL LYNCH: Archbishop Fisher, in your answers to Ms Leong to some extent you conceded that there is some merit to expanding exemptions or protections for other protected attributes apart from religion, does that not just get you to a bill of rights or a charter of rights?

Archbishop FISHER: I recognise that the whole debate around charters of rights is a much more complex one than this Committee is addressing, or that the bishops have addressed in this submission. There would be many different views on it. Even those of us who agree with protecting religious liberty would be wary of going all the way to a charter of rights. Amongst the reasons that people are very concerned about that is it amounts—from the experience seen in other countries—to a radical shift in the lawmaking power away from parliament and towards the judiciary. The judiciary ends up deciding many things, perhaps most things, in places like Canada and the United States that we would expect the Parliament to decide here, and that is because of bills of rights. People have a whole range of other concerns about bills of rights, which we could discuss another day.

On this particular right of freedom of religion, it is recognised by most other States in one form or another—at least the non-discrimination part—and recognised by all the countries in the world. It is not peculiar to people who have bills of rights, it is simply a recognition across the world that amongst the freedoms that people need in order to flourish lies the freedom to believe the things that they believe and the ability to express those in worship and in other public manifestations. If people want to make the case for some other positive or expanded rights in our law, I think that they need to make the case and lawmakers such as yourselves may bring that forward in the future.

Mr PAUL LYNCH: When you were answering questions from Mr Dib, you seemed to express a degree of discomfort about religious vilification laws. We heard some evidence yesterday about a model that would target harm against particular individuals rather than grandiose comments about someone else's religion that had a fairly high bar. Would that sort of model give you a greater degree of comfort with those sorts of laws?

Archbishop FISHER: I would certainly support some kind of religious vilification laws and laws against hate speech and hateful action. The first thing in this area that we have to do is to teach our children and cultivate within ourselves a tolerance, a generosity of spirit and a willingness to make space for people and not always rely on our policemen, courts and tribunals to fix these things. These are fundamental human and moral questions about giving respect to each other and allowing space for difference. While I think that there may very well be a case for laws against various kinds of false or hateful speech—and we have some already, and there may be a case for stronger ones—what I said before about vilification was simply to try to make my own sense of why that is not prominent in this bill, because I think that it raises another range of concerns that people might want to address separately.

Mr PAUL LYNCH: Related to that, the Ruddock review recommended the abolition of the law of blasphemy. Do you have a view on that?

Archbishop FISHER: Well, that is interesting. I remember years ago doing some writing on this when, as you might remember, there was an artwork displayed called the *Piss Christ* where a crucifix was put in a beaker full of urine. It was deeply offensive to Christians, and indeed would have been deeply offensive to Muslims and Jews too. At that time there was a question about the blasphemy laws, because they were still on the books in Victoria where the matter was briefly prosecuted. Whether it is blasphemy laws, which were an old way of a society showing its reverence for the sacred and for people who believe in the sacred, or whether we use other kinds of laws—and today we are tending to use things like anti-discrimination, freedom of religion and anti-vilification laws—these represent different ways of trying to make space for each other's different religious beliefs, and for the fact that the realm of the sacred is very precious to many people, perhaps to the majority of people. They do not want their Messiah or their prophet attacked or belittled in the ways in which that supposed artwork did.

Dr JOE McGIRR: Good morning, Your Grace and Your Eminence. I welcome both you and your advisers. My question is quite brief and, in a sense, has been touched on already in a previous question to Your Grace. It is the issue of the religious ethos organisations, particularly in relation to 22M. There has been evidence, or a view put, that essentially this extends a human right to an organisation where its human rights should be restricted to individuals. I am interested in your response to that.

Archbishop FISHER: This comes back to the point made in the international instruments that freedom of religion is not just the freedom to have a private view as an individual but the freedom for religious believers to express and manifest those views in the way that religious believers do. Perhaps the most central way that religious believers express their faith is by worship, and almost all religions do that together. They gather in a church, a mosque, a synagogue or a temple. So it is a common communal or institutional activity, the activity of expressing religion, even in something as apparently private as worship. If you go into the other ways that people manifest their religion, certainly for Christianity—but I would say this applies to a number of other faiths too—

they express their religion through things like the way they educate their children, the way they care for the sick and the poor and the care for the elderly, and that is done in institutions.

Christians invented hospitals, hospices and universities. Other faiths have invented other institutions, through which they care for orphans or look after the poor or refugees. That is quite central to what it is to believe and express your belief—to be able to get together with others and look after refugees, the poor, the sick or the elderly, as most faiths understand it. For those sorts of reasons it just does not work to say we will protect it just for individuals but not institutions, because in fact the way that individuals engage in and manifest their faith is in a corporate, communal and institutional way.

Dr JOE McGIRR: Thank you. I am happy with that. I will pass on. Thank you, Your Grace.

Ms TANIA MIHAILUK: Thank you to Your Grace and Your Eminence for being here today and for your submission. I am not sure whether you may have read other submissions but I would like to bring your attention to a submission yesterday by the Royal Australian and New Zealand College of Obstetricians and Gynaecologists [RANZCOG] that specifically made comment about their view—and I will quote their submission—that should this bill be passed:

... it will have serious consequences for fair and equitable access to health services in NSW.

They also further state that should the bill become law, the hospital or health facility—they are referring to religious hospitals and health facilities:

... may be permitted to employ only people who hold certain religious beliefs that are hostile to particular groups, such as same sex couples or transgenders, or to the provision of particular health services, such as contraception ...

I just wanted to ask both of you your view on those particular statements and whether it would indeed at all affect the 11 Catholic hospitals and 60 Catholic nursing homes in the way that they hire staff, or potentially would hire staff if the bill was enacted.

Archbishop FISHER: I think we all know that Catholic hospitals employ all sorts of people from all sorts of backgrounds and they treat anybody simply on the basis of their need. They do not discriminate on the basis of religion, age or any other attribute. It is simply their medical need—that is why they are cared for—and in the case of aged care, their age and frailty. That is why they are cared for. We have no interest in what other things go on in their lives when it comes to accepting them into our institutions. In terms of the employees, clearly it is relevant to a faith-based hospital or aged care—particularly what the leaders think and stand for. But even the rest of the employees would usually be asked to sign onto some kind of code of ethics, or there would be some induction program that explained the ethos of that institution and that was saying, "This is what you are expected to live by and work by here."

You might have your own private views that might be quite different. I do not know of any Catholic hospital that has ever interfered with that. But if that hospital says, for instance, "We don't do euthanasia," people will get that somewhere else if that has become legal in their part of the world. They will know when they go to the Catholic hospital that that is not one of the things they do. No hospital does everything. All hospitals have their specialties and people have to shop around for exactly what they want. People will know that you do not go to the Catholic hospital for that. I do not think that is discriminatory against employees to say, "We expect you to abide by the Catholic code of ethics, which includes that we do not kill our patients, even if they are very sick and are asking for it. That is just not the way we do it in our institution." Again, I think we can make space for each other in this community so we can have Catholic hospitals, Jewish hospitals and Muslim hospitals as well as a great many State secular hospitals and aged care facilities.

Ms TANIA MIHAILUK: Thank you for that, because I agree with you. I have a very good friend of mine that works for St Vincent's as a doctor. He is not Catholic and indeed he is not a Christian—in fact, an atheist—but has had a terrific career at St Vincent's. There was also a comment made yesterday by the Women's Electoral Lobby and it referred to their view that women were excluded from the leadership of religious organisations. They suggested in their submission and in their commentary here that this bill would in fact further exclude women from the leadership of the Catholic Church. What would your view be on that, Your Grace?

Archbishop FISHER: I cannot see how this bears on that at all—this present bill. We presently are free to choose who we ordain as priests in all our churches—the other faiths, as well. I do not think this bill affects that present freedom one way or the other. I think to the extent that it seeks to allow freedom of religious speech, you might even say it helps to protect the ability of Christian or other faith women to express their opinion about their faith on this matter and not be shut down by an employer or someone else for doing so. I do not think it affects the question of who is ordained, but it could even help a little.

I would make a little comparison here. I think if The Greens party says, "We expect our volunteers, our members and our MPs to follow The Greens party manifesto and beliefs," that they do not want to be infiltrated by the coal industry and others who want to use them to further some other agenda. I think it is entirely reasonable for The Greens party to say, "If you want to work for us or volunteer for us, you will abide by this set of beliefs and activities." I think when our Catholic seminaries or Catholic hospitals say, "According to our beliefs, this is who can be ordained," or, "This is what activities doctors and nurses could engage in," it is entirely reasonable. People know when they are going to a Catholic seminary or Catholic hospital that that is what they are going to get, just like when they go to The Greens party they know that is what they are going to get. I think, again, we can make that space for each other in a country like Australia.

The CHAIR: Your Grace, I have a question. We are into free time now. It relates to the issue that Ms Mihailuk touched on. We had one of our submitters talk about the fact that you may be able to contract out of the right to make statements around your religion, for example, outside of your work hours. I just wanted to put to you that that would be something that would be acceptable to you as well. In the case of Israel Folau—I do not know the circumstance. But if indeed there was an agreement that statements that are made outside the actual playing of a Rugby game would not traverse certain issues—that that would be acceptable as a matter of contract. Would that be something that you would support in an amendment to the bill as it currently stands, not specific to the personal circumstances I mentioned, but more as a kind of contracting out?

Archbishop FISHER: I have not heard this proposal before, so I might take it on notice and give you some thoughts.

The CHAIR: Of course.

Archbishop FISHER: My immediate instinct is that we have to beware the power differential between employers and employees. Employees could be pressured to give up rights which our community has said that they want respected. But they know the only way they can get their job—the only way they can perform their art or their sport—is by signing this bit of paper that requires them to give up the right of free speech or the right to practice their religion. My initial instinct is that we have to be very careful here about people contracting away their human rights, but I would need to think some more about your proposal.

The CHAIR: Thank you, Your Grace. If you would take it on notice, I would appreciate that. We are now open to questions.

The Hon. GREG DONNELLY: Thanks, Madam Chair, and through you to Your Grace and Your Eminence: My colleague Ms Mihailuk referred to a submission yesterday and some evidence from RANZCOG, which is the Royal Australian and New Zealand College of Obstetricians and Gynaecologists, which is submission number 60. I might ask you straight up: Have you read the submission?

Archbishop FISHER: No, sorry.

The Hon. GREG DONNELLY: In evidence provided by the president of the Royal Australian and New Zealand College of Obstetricians and Gynaecologists [RANZCOG] yesterday, Dr Vijay Roach, he indicated what I would describe loosely, using his words some concern, some might say serious concern but at least expressing concern, about the fact that Catholic hospitals—and he specifically referred to the Mater Hospital in North Sydney and St Vincent's at Darlinghurst—as hospitals that do not provide and will not provide what he sees as the full suite of female reproductive options. Specifically, he talked about abortion and sterilisation.

The CHAIR: Mr Donnelly, I am just conscious of time. If you could bring it to a question, please?

The Hon. GREG DONNELLY: Am I allowed to ask my question, or not?

The CHAIR: You are but I am just saying that we will have a hearing that will finish in about five minutes time and there are other members, so if you could bring it to a question, that would be very helpful, thank you.

The Hon. GREG DONNELLY: Well, I appreciate not being interrupted, Madam Chair, as I question.

The CHAIR: Please proceed.

The Hon. GREG DONNELLY: Shall I start again?

The CHAIR: Please proceed.

The Hon. GREG DONNELLY: He expressed concern about these two Catholic hospitals not providing what he described as that the suite of female reproductive options and choices, specifically with respect to abortion and sterilisation. I am wondering, in the light of your previous answer on this matter of health care, is it clearly the case that your submission is that there ought be or should be an ability for faith-based hospitals to exist in

society that we have and be able to conduct and run the services and indeed the procedures that they wish to offer as a Catholic hospital, or, indeed, the San hospital, which is the Sydney Adventist Hospital, or any other one you would like to nominate?

Archbishop FISHER: Yes, absolutely. Look, I think Australians love these institutions. All sorts of people go to St Vincent's or to the Mater, not just Catholics or Christians. All sorts of people have had wonderful care there and they are loved in part because of their religious inspiration, their pastoral care, the feeling people have, the ethos they encounter when they go to those institutions. It would be a terrible impoverishment of our community if some professional organisation or some ideologues managed to stop that being available in our community because they were going to force everyone to fit into the same model and the same set of services.

As I have said, not every hospital provides every service. In fact, a lot of female reproductive care is in specialist places, which a lot of hospitals would not offer—even things as simple as childbirth. You go to particular places for that where they are very good at that rather than just randomly to any clinic around. So we do not expect every healthcare institution to provide every possible service. We recognise that people will shop around for what they need or what they are seeking. I think that the range of things that a Catholic hospital does not provide are pretty small but I think the range of things that it does provide that perhaps you will not get in other places is pretty large and that is why all sorts of people go there.

The CHAIR: Ms Mihailuk, you have a question. Again, I am conscious of everybody's time. We will close the testimony in two minutes.

Ms TANIA MIHAILUK: Madam Chair, I just wanted to also ask both His Grace and His Eminence and refer to their submission in the context that about 25 per cent or a quarter of our State identify as Catholic and indeed 66 per cent of people identify with a faith or a religion. I just want to ask their views on what they think the community that they represent would think of the bill.

Archbishop NAJARIAN: I am not a Catholic, obviously.

Ms TANIA MIHAILUK: No. You are Orthodox like me.

Archbishop NAJARIAN: And we do not have the organisational infrastructure which the Catholic Church has in this country, but nonetheless the reason I am here today is because we do not have faith-based schools but Armenian students, and parents sometimes, choose Catholic schools. I understand at the Catholic schools that first they have to, obviously, meet their own needs and if they have a space they will accept us. I understand that. I do not regard that as discrimination. The same applies sometimes for Armenians who go and work in the hospitals or in the schools as staff. Even I have clergy, for example, who chose on purpose when he was retired to go to a Catholic institution because it was Catholic. So the faith aspect of these institutions is very important, I think, and they give a great service. I think if just for a second we think that all these institutions, if they are taken away, the Government would be in a very serious situation. In that sense the Catholics are doing a good service not only for their own people per se for their own folks but as well as outside to non-Catholics, and in the same time doing a favour for this country and people as well.

Ms TANIA MIHAILUK: Thank you, Your Eminence.

Archbishop FISHER: I think you have had more than 13,000 submissions and more than two-thirds of them have been in favour of the bill.

Ms TANIA MIHAILUK: Close to 20,000 I think, actually.

Archbishop FISHER: Oh, great. Well I do not know if the proportions have changed.

Ms TANIA MIHAILUK: No, no—two-thirds are in favour.

Ms JENNY LEONG: I think the polling is about as reliable as is that in the United States [US] in relying on those, so let us not rely on those numbers too much, shall we?

Ms TANIA MIHAILUK: Madam Chair—

The Hon. GREG DONNELLY: You couldn't get any grounds to make a submission. That is the problem.

The CHAIR: We will let His Grace answer.

The Hon. GREG DONNELLY: The Catholics had to jump in.

The CHAIR: Excuse me, Mr Donnelly. We will let His Grace finish.

Archbishop FISHER: I think it is just one indication of engagement with the issue. I think a lot of parliamentary inquiries and bills do not get anything like that number of submissions, so I think there are indications that people care about this. New South Wales happens to be the most religious part of Australia in terms of people that identify as believers and have practised their faith, especially Sydney among the capitals in Australia. That is an interesting phenomenon but it is likely then that a significant proportion of people will care and certainly that is my experience in the Catholic community—that people are engaged and do care passionately about religious freedom.

Ms TANIA MIHAILUK: Thank you, Your Grace. Thank you, Your Eminence, as well.

The CHAIR: Thank you, Your Grace and Your Eminence for your time today. There were more questions. I note in particular Ms Leong had a question so I imagine a number of us will be providing questions on notice. They will come through the committee staff for your consideration. There were also questions on notice you took during the hearings. Thank you for taking those on.

Archbishop FISHER: Thank you. Will you remind us of those, please?

The CHAIR: We will indeed.

Archbishop FISHER: Thank you.

The CHAIR: Rest, assured. Indeed. I thank you very much. Of course you will have the transcript from which to recall the context of those questions.

Archbishop FISHER: Good.

The CHAIR: Again I thank you for your time. I thank you for your submission.

The Hon. GREG DONNELLY: Hear, hear.

The CHAIR: Those submissions have been of very high quality across the board, which has made our job a little easier. I thank also others, your advisers, who joined us today: Ms Monica Doumit, Mr Kieran Walton and Mr Nishan Basmajian. Thank you very much for your attendance. You are most welcome. I will close the testimony now. The Committee will resume with our next panel at 10:40.

(The witnesses withdrew.)

(Short adjournment)

MARIA NAWAZ, Deputy Chair, Human Rights Committee, Law Society of NSW, affirmed and examined

DIANNE ANAGNOS, Principal Solicitor, Kingsford Legal Centre, affirmed and examined

The CHAIR: Good morning. Thank you for joining us today. I welcome you to the third day of hearings for this joint committee, and I acknowledge the time that you are taking out of your busy schedules to join us. I will quickly outline how we run the proceedings. We have a large committee, so we will not hear opening statements from you and instead will go direct to questions. We have shared the questions amongst members on an alphabetical rotation basis. Members get about five minutes to address a question and for you to answer. They are not strict deadlines, so we will allow you to continue your answer if it goes beyond the five minutes. Some members might decide to forego their time, and if so we will move on sequentially. I will manage that so that you do not have to worry. We may have some free time at the end in which members can raise their hands and ask additional questions. Do you have any questions about that?

Ms ANAGNOS: No, thank you.

Mr GURMESH SINGH: Ms Anagnos, in recommendation nine of your submission on page 8 you have asked to remove specific provisions for the wearing of religious symbols. Some religions have articles of faith. For example, the Sikh religion has five articles of faith that baptised Sikhs must wear at all times. Why should these rights not be protected in law?

The Hon. GREG DONNELLY: Hear, hear.

Ms ANAGNOS: We are not saying that those religious symbols and religious clothing should not be protected in work. This recommendation is specifically in relation to the way that the recommendation is phrased in the bill. We are saying that makes it unnecessarily complex, and that the right to wear religious symbols and religious clothing can adequately be protected without those particular exemptions and considerations in section 22N (6).

Mr GURMESH SINGH: As a follow-on from that, what about this makes it overly complex? It is only 2½ paragraphs. What is it about the content and the detail of this provision that you think makes it overly complex?

Ms ANAGNOS: There is a broader provision here that generally protects a person from being discriminated against on the basis of their religion elsewhere in the bill. We are saying that something along those lines is adequate to protect the right to wear religious symbols and religious dress, and provides for reasonable considerations to be taken into account more broadly, whereas this makes the interpretation of that unnecessarily complex and might take away someone's right to wear religious symbols or clothes in the workplace.

Mr GURMESH SINGH: Could you please explain how it might take away someone's right?

Ms ANAGNOS: In general, our argument is that it makes it unnecessarily complex, but I will have to take that question on notice to provide examples.

Mr JIHAD DIB: My question can be answered by either witness, but can be directed more towards Ms Nawaz. In both submissions that we are looking at, there are a couple of case studies. One is about a gentleman called Ali and another one from the Law Society is about Zeinab. Both point to the different situations. As a quick reminder, Ali is unfortunately a stereotypical young man in jail who cannot pray. The other, which relates to an issue that I deal with a lot more in my local area, is about a lady called Zeinab who is vilified and discriminated against because of her headdress and has a number of things said to her. For fellow Committee members, her case study is on page 5.

In both of these examples you say that the laws are not there to protect these two victims, and then there is a proposal for protections at a Federal level. What I am concerned about, and maybe you can explain this to me, is why would you not be looking at doing that at a State level, given the absence of protection and the massive impact that it has? These are two of any number of examples that could exist on a daily basis. We heard evidence from other witnesses, particularly yesterday, of some of the experiences of women in Islamic headwear who are victimised in this way. Why would we not looking at implementing that in New South Wales law given the absence of it anywhere else?

Ms NAWAZ: Thank you for your question. The Law Society submission does not actually contain any case studies, so is your question directed to me or my colleague?

Mr JIHAD DIB: Well, is it potentially in the Kingsford Legal Centre submission? There are two different submissions—one contains Ali's case study as a standalone, and the second contains both Ali and Zeinab. But it is definitely from the Kingsford submission. Ms Anagnos?

Ms ANAGNOS: The case study on Ali's story is from our submission.

Mr JIHAD DIB: And the Zeinab one?

Ms ANAGNOS: Zeinab is not in our submission to this inquiry.

Mr GURMESH SINGH: Which page are you on, Jihad?

Mr JIHAD DIB: I am on page 5 of the Kingsford Legal Centre submission.

Ms ANAGNOS: Ali's case study is on page 4 of our submission.

Mr JIHAD DIB: I might just ask for a little bit of clarification here. The banner reads:

Kingsford Legal Centre, Community Legal Centres NSW the National Association of Community Legal Centres (NACLC).

The Hon. GREG DONNELLY: That is the annexure, is it?

Ms TANIA MIHAILUK: That is a different one, is it not?

Dr JOE MCGIRR: It is in the submission to the Commonwealth, which is an addendum.

Mr JIHAD DIB: My apologies. Can we talk about the Ali one?

Ms ANAGNOS: Yes.

Mr JIHAD DIB: Basically, Zeinab wears a hijab. One day when waiting at a cafe she was sworn at, told to go back to her own country and called a terrorist et cetera. She was intimidated and shaken by the incident, but there is no protection from this discrimination.

Ms ANAGNOS: Thank you. So, yes, Ali's case study is a real-life case study that we saw at Kingsford Legal Centre. The question was: Given that we are arguing that the sorts of situations are unfair and that there should be a protection on the basis of religion, why should we proceed towards that under a State bill? Our arguments around that are that we feel that the Anti-Discrimination Act should be reviewed entirely; that it is about time that it was reviewed as a whole piece of legislation; that we are in the middle of ongoing, concurrent processes reviewing these protections; and that it does make more sense to have a holistic national protection to protect against religious discrimination.

Mr JIHAD DIB: With respect to that—and I appreciate the answer—there has been a call for a review for a long time. Had a review taken place, we would not be in this particular situation at the moment. My concern is that the longer we wait for a review, the more people like Ali and Zanab are left open to a huge amount of discrimination.

Ms ANAGNOS: Yes, I understand that. Our opposition to the bill is not in terms of the opposition to creating a protection against discrimination on the basis of religion. It is in the way it is outlined here. Of course we would like to see people protected against discrimination on the basis of their religion in New South Wales. We are just proposing a different process for that.

Mr JIHAD DIB: Thanks, and apologies for the confusion earlier on.

The Hon. GREG DONNELLY: Can I just start with a question to Ms Anagnos in regard to the Kingsford Legal Centre? Specifically can I take you to page 1 of the submission? It is dated 21 August 2020.

Ms ANAGNOS: Yes.

The Hon. GREG DONNELLY: There is a summary of recommendations starting on that page and going over to the following page, concluding at recommendation number 17. I specifically take you to number four that you have there, whereby you say:

The definition of 'religious activities' should be narrowed and ...

This is the part I want to give some emphasis to:

... not include activities that are only 'motivated' by a religious belief ...

With respect to a number of the presenters from the faith traditions who have given evidence to this inquiry either through submission or orally by coming to either two of the previous days' hearings or today's hearing, they have been quite unambiguous that with respect to what they understand religion is, in its fullest understanding and application in Australia and anywhere—is that obviously it is the ability to go to their church, their synagogue, their temple, whatever the case may be, and to within the four walls pray or engage in sacraments or other activities that are particular to that faith tradition.

That is inside the four walls of the church or whatever the building is. But in addition to that—and this is critical. Time and again they have said they need to also have and must have—and this is quite elemental to their notion of their religious belief—an ability to manifest it or live their faith outside the four walls of the building. That is the totality of the animation of religious faith and religiosity to the faith leaders, or a number of them who have given evidence.

In your point number 4 you are talking about or suggesting a diminution of the understanding of religious activities—a narrowing of it down—so it does not include activities that only "motivate". Can you explain two things? What do you mean by "are only motivated by religious belief" and how does one defines that? That is my first question. My second question is: What is your response to the faith leaders who are here representing their religions and their religious beliefs and the understanding and the meaning of their belief to their position that faith is to be only exercised within the four walls and that manifestation is a very important part for them?

Ms ANAGNOS: Two questions—thank you. So, the first question was about what we mean by narrowing the definition. What we stated in our submission is that if we are focusing on the motivation only, that does not actually require us to focus on the religion itself. That could be interpreted in a way that is not actually in accordance with religious belief. It is the way the person sees their motivation and their belief, rather than in accordance to that religion's doctrine.

The Hon. GREG DONNELLY: Sorry to interrupt, but who determines that? You are saying that you are concerned about a contradiction or incongruity between the motivation and the religious tenets, beliefs or traditions, or whatever it might be. Who is to determine that incongruity?

Ms ANAGNOS: Who would be determining that if a complaint were made?

The Hon. GREG DONNELLY: You are setting up a scenario whereby it appears there is a judgement being made about whether or not there is conformity or congruency between the two—the motivation of the individual and the religious faith. I am saying: Who is determining that under your proposition?

Ms ANAGNOS: Okay. This provision in the bill would have is a situation where—

The CHAIR: Just excuse me. We are up against time for Mr Donnelly, but Mr Farlow has generously given some of his time for you to complete your answer.

The Hon. GREG DONNELLY: I am grateful to the honourable member. Thank you. I will not take too much longer.

Ms ANAGNOS: What this would have is that somebody who says that they were motivated by religious belief, even though the way they understand that motivation is not in accordance with Scriptures or understanding, would still be protected by this provision, because it is their belief, their motivation and their understanding of it. The second question was around—manifestation of religion should not be confined to the walls of a church or a synagogue or a temple.

The Hon. GREG DONNELLY: It seems to me the proposition you have got there at four appears to be in stark contrast to the submissions by the faith leaders around the idea of religion and religiosity in its full application and its full meaning and the way it fully animates the human person. So, there is this discrepancy. I am just wondering: How do you square those two?

Ms ANAGNOS: We are not arguing that the manifestation of a religion only needs to happen within the four walls of a church or a synagogue. What we are saying is that the way this is phrased is very broad and could protect activities that are not actually in accordance with religion or religious belief.

The Hon. SCOTT FARLOW: My question is to the Law Society. It comes down to the religious belief definition. Firstly, can I say from the outset thank you for your submission. I think it was very detailed, constructive and helpful for the Committee. In terms of the criticisms the Law Society makes with respect to the definition of religious belief, are you familiar with the High Court determination in *Church of the New Faith v Commissioner for Pay-Roll Tax*?

Ms NAWAZ: I am not familiar with that decision, sorry.

The Hon. SCOTT FARLOW: Okay. From my understanding from the proponent of the bill, the terminology was drawn from that case, where the High Court—the chief justices at the time were Mason and Brennan. The definition that they applied in terms of religious belief at the time was—and you might want to take this on notice because I imagine it is not something you could answer off the top of your head—that:

"... for the purposes of the law, the criteria for religion are twofold:

first, belief in a supernatural Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief, though canons of conduct which offend against the ordinary laws are outside the area of any immunity, privilege or right conferred on the grounds of religion.

I just want to know, if you could take it on notice perhaps, as to whether you or the Law Society believes that the definition in looking at that *Church of the New Faith v Commissioner of Pay-Roll Tax (Vic)* that the definition as outlined in this bill is consistent with that High Court definition applied to religious belief and religious institutions in that case which, I would suggest, is the greatest authority in terms of religious belief and religious institutions on what actually makes up a genuine religious belief. I will leave my point there.

Ms NAWAZ: I will take that on notice, thank you.

The Hon. SCOTT FARLOW: Thank you.

The CHAIR: We now move, in Mr Faraway's absence, to Mr Greenwich.

Mr ALEX GREENWICH: Thank you, Madam Chair, and good morning. My questions relate to sections 22Z (1) and 22Z (2). Obviously, we are in the middle of a global pandemic. Public health orders, which are administrative decisions, are being put in place to keep people safe and to prevent the spread of COVID-19. Feel free to take this on notice as well because I know the legal experts of quality Australia has. I wonder how you feel about any risks or concerns that those sections in the legislation, if passed, could allow someone to use the justification of religious activity or being a religious ethos organisation to potentially challenge a public health order.

Ms NAWAZ: Sure, I can attempt to answer that now. So, my understanding of the proposed section 22Z of the bill is that it would provide protection against discrimination—for example, for a religious ethos organisation—if you could bring a claim in relation to a State law or program. So in terms of public health orders made in relation to COVID-19, if an order was to, for example, restrict the number of people who could gather at a place of worship and a religious ethos organisation was to hold a gathering in excess of that number, in conjunction with the religious activity definition in the bill, which does not extend to conduct that is unlawful and that does not attract imprisonment, my understanding is that COVID health orders, in terms of applying to organisations or corporations, do not attract imprisonment for breach, then there would be a conflict. It appears that if that was to happen, the religious ethos organisation would be able to make a complaint of discrimination under the bill.

Mr ALEX GREENWICH: Thank you.

Ms ANAGNOS: I do not have anything to add.

Mr ALEX GREENWICH: Thank you. Both submissions also raise concerns about section 22M. Yesterday we heard examples of potential ability for a person to also use religious activity to potentially discriminate against another person of faith based on their religion. Could you talk to your concerns around 22M?

Ms ANAGNOS: Our concerns around section 22M are again in how broad that definition is of a religious ethos organisation. It conflicts with the current definition of a religious body in section 56 of the Act, which defines a religious organisation to include a body established to propagate religion. That has already been construed quite widely in New South Wales. So what we are saying is that the expansion of the definition and the number of bodies that could fit into that category of religious ethos organisations could end up creating a situation where more people who need access to services or are seeking employment by a religious ethos organisation could miss out.

So they could miss out on employment or could miss out on receiving a service if that religious ethos organisation prefers or gives priority to members of their own faith. We know that a great number of services that are provided in our community, particularly services that are funded by Government programs, are being delivered by charities. You know, sometimes charities have set up separate organisations to deliver these services. We do not think that people should miss out on the provision of services or employment because that service is being provided by a religious ethos organisation.

Ms NAWAZ: In terms of the Law Society's submission on section 22M, we are of the view that the provision should either be omitted or modified to narrow its scope and application. One of our concerns is that the proposed section does not include any proportionality testing—so there is no notion of reasonableness, necessity or proportionality. This could result in one right being privileged over another without that balancing exercise being undertaken.

Mr ALEX GREENWICH: Thank you.

The CHAIR: Mr Latham?

The Hon. MARK LATHAM: Thank you, Chair, and thank you to the panel members. If I can come to Ms Nawaz on this point about the public health order related to COVID, under the first part of this bill, which would apply across the Anti-Discrimination Act, the use of the Siracusa principles out of 18.3 of the International Covenant on Civil and Political Rights, do you recognise the point there in black and white that religious freedom or anti-discrimination here would be extinguished on the basis of a necessary public health order and under part A as prescribed by law that these health orders in New South Wales are a delegated authority of Government out of resolutions this Parliament passed in March?

Ms NAWAZ: In terms of the Siracusa principles being referred to, my understanding is those principles set out how restrictions on human rights must meet standards of legality, necessity and proportionality. In terms of the COVID health orders, the reason why the Law Society's submission states support—or the Law Society's submission states support for protection against discrimination on the basis of religion. It also states support for protection for the human right to freedom of religion. However, we believe that these two issues should be covered in separate Acts. We believe that protection against discrimination on the basis of religion should be contained in the Anti-Discrimination Act, but in order to protect freedom of religion it should be protected in a human rights Act for New South Wales.

The reason for that is sometimes we do see human rights coming into conflict with each other and needing to be balanced. The Anti-Discrimination Act does not provide for a balancing exercise as a human rights Act would. A human rights Act, if modelled on other jurisdictions in Australia, could contain a proportionality or balancing test where rights are not all absolute and some rights can be limited in some circumstances, but it requires an analysis of these things. I do not think an anti-discrimination Act is the correct place to put in these sorts of rights. It would be better placed in a human rights Act.

The Hon. MARK LATHAM: That is one thing, but on the question I asked about the public health order and in your earlier answer, you have not factored in the very first part of this bill, Principles of Act, newly described?

Ms NAWAZ: In terms of the principles of the Act, my understanding is that they would operate as a sort of objects clause for the Act. In terms of an objects clause for the Act, I have not looked at it in terms of the public health orders. So, I can take that on notice, if that would assist.

The Hon. MARK LATHAM: If you could, thanks. Further, one of the criticisms made of the bill by people, I suppose, from the progressive law movement, if I can use that term, is that there are extraordinary provisions here that are not reflected in other parts of the Anti-Discrimination Act as it stands. Would you accept that at section 22M we have existing exemptions for non-government schools and charities; that section 22Z is not unusual because it mirrors an existing provision at section 22J on sexual harassment; and on the point that is being made in the Law Society's submission about future believe, that is also mirroring something that currently exists with regard to disability. So in those three areas, it is not extraordinary at all, is it?

Ms NAWAZ: In terms of section 22M, the exemption goes beyond existing exemptions for religious organisations, both in section 56 of the Anti-Discrimination Act [ADA] but also in other discrimination law across other States and Territories as well. In terms of section 22Z, I think that it is a novel provision for anti-discrimination law because it provides protections for religious ethos organisations who would then have a right of standing to bring a complaint. That is unusual in discrimination law in Australia.

The Hon. MARK LATHAM: Are you saying that it is not in section 22J?

Ms NAWAZ: I would have to have a look at that, sorry. In terms of future activities, it is correct that the protected attribute of disability provides protection against discrimination on the basis of the future attribute in section 49A of the Anti-Discrimination Act. The Law Society's concern is that where a person's family medical history, for example, might provide a degree of inevitability as to someone's future disability, it is difficult to hold the same level of certainty as to whether someone will or will not hold a belief in the future. Our concern is that this extends the protection in a way that might potentially be unclear and difficult to apply.

Ms JENNY LEONG: I might continue along the same line of questioning to start with. In relation to the provisions set out in the bill, are you suggesting that it would provide for a religious body or religious ethos organisation to be able to make a claim of discrimination against the New South Wales Government, another organisation or an individual?

Ms NAWAZ: My understanding of reading proposed section 22Z, which covers State laws and programs, is that a religious ethos organisation under subsection (2) of that proposed section would be able to make a complaint of discrimination, and that is unusual in discrimination law.

Ms JENNY LEONG: I appreciate that you might want to take this on notice, but can you comment on how this would intersect with, for example, a law requiring reporting of child sexual assault versus the confidentiality of the confessional?

Ms NAWAZ: I would have to take that on notice.

Ms JENNY LEONG: Thank you, I would appreciate that. We have heard talk of the Siracusa Principles throughout this inquiry. Obviously they provide the need for a proportionality test, but in that same section of the proposed One Nation bill we have seen references made specifically to article 18 (3) of the International Covenant on Civil and Political Rights [ICCPR] that highlight that subsection rather than the other parts of the ICCPR. I appreciate that you might also want to take this on notice, but how would that intersect with the idea of balancing or proportionality between rights when we are picking one subclause to refer to?

The Hon. MARK LATHAM: That is just not true.

The CHAIR: Mr Latham, do you have a point of order?

The Hon. MARK LATHAM: Point of order: The witness is being misled, because clearly under the principles of the Act:

... Tribunal and Courts shall have fundamental regard to the following—

(a) the *International Covenant on Civil and Political Rights*,

What is the point of presenting perhaps deliberately misleading information?

Ms JENNY LEONG: To the point of order—

The Hon. MARK LATHAM: And then it says in subsection (2) "in particular".

The CHAIR: Excuse me, Mr Latham.

Ms JENNY LEONG: I do not believe that Mr Latham should be able to correct the way that I am asking the question. The question is not factually incorrect.

The Hon. MARK LATHAM: Yes, it is.

Ms JENNY LEONG: The bill specifically pulls out and refers to, I believe, article 18 (3) and wants to insert the wording of that article and the sub-point into the beginning of the Anti-Discrimination Act, which specifically refers to religious freedom.

The Hon. MARK LATHAM: Have you read the bill?

The CHAIR: I am happy to allow the question. Please proceed.

Ms JENNY LEONG: Thank you, Chair.

The Hon. MARK LATHAM: Shocking.

Ms JENNY LEONG: The challenge is that there are two parts where we have a conflicting issue of the Siracusa Principles being pointed to as a way to look at the proportionality test, but at the same time only pulling out certain elements of the ICCPR into the bill and providing different exemptions and protections for the different protected attributes.

Ms NAWAZ: In terms of proposed section 3 of the Act, I can see that it refers to the ICCPR, and subsection 2 in particular refers to article 18 (3) of that treaty. From my understanding, proposed section 3 would operate as a type of objects clause for the Act. Across other human rights and anti-discrimination legislation in the country we see a number of other relevant international instruments usually included. For example, because the Anti-Discrimination Act includes many other protected attributes, it may be relevant to consider whether we need to include in it reference to those other seven core international treaties in relation to rights that are protected. In terms of specifically pulling out article 18 (3), this creates some confusion.

We know that objects clauses in Acts are generally used as an aid in statutory interpretation to resolve something when it is unclear or ambiguous. However, we know also by principles of statutory interpretation that while regard may be had to an objects clause to resolve any uncertainty or ambiguity, if there is unclear provision in the Act an objects clause cannot control clear statutory language. For example, reference to Siracusa Principles that involve the balancing of rights. If other clauses in the bill clearly privilege one right over another, that creates some confusion. Any objects clause cannot remedy those sorts of issues in an Act. That is why the Law Society has recommended that if freedom of religion is to be protected, which is something that we support, it be protected separately in a human rights Act for New South Wales.

Ms JENNY LEONG: Can I also just ask—

The CHAIR: Ms Leong, you are out of time. The time is Mr Lynch's, unless he wanted to surrender some of his time.

Ms JENNY LEONG: It was a yes/no answer for the other witness, if I may.

The Hon. GREG DONNELLY: Bad luck, your time is up.

Ms JENNY LEONG: Chair, does Mr Donnelly need to provide that level of insult, as he has continually for the last two days, as we go through these hearings? I can give you a list of them if you want. It is unacceptable.

The Hon. GREG DONNELLY: Oh, you are precious.

Ms JENNY LEONG: It continues, Chair. Is it allowed to continue?

The CHAIR: Mr Donnelly, and other members of the Committee, I ask that you respect one another in the questioning. There are different views and opinions so—

Ms JENNY LEONG: It does not mean that I hurl insults at Mr Donnelly, Chair.

The CHAIR: Excuse me, I am speaking and I am chairing the meeting. Thank you, Ms Leong. I have taken your point. I remind members that the comments are not very helpful for a smooth running meeting and for being respectful and courteous towards our witnesses, who are giving their time voluntarily.

Mr PAUL LYNCH: Ms Nawaz, going back to COVID-19, the consequence of what you just said at the end of your last answer is that, as a matter of clear statutory interpretation, the provisions of section 22Z and being able to ignore the COVID direction cannot be overridden by section 3—it is a matter of clear statutory interpretation. There is a very clear statutory provision, and that is not changed by a broad reference to the Siracusa Principles. Is that right?

Ms NAWAZ: That would be my understanding of how it would work.

Mr PAUL LYNCH: What do you make of the use of the Siracusa Principles in this bill? My understanding of them is that they are an aid for the drafting of legislation. Would this be unique in the world, to have them used in a bill purportedly to make decisions and determinations rather than as a guide to drafting?

Ms NAWAZ: I am not across the world's legislation, so I cannot comment on that point. In terms of the Siracusa Principles, I guess they are used as an aid in order to determine when restrictions can be placed on human rights. Going back to our point, I think that balancing of rights is a complex thing. It requires proportionality testing, and that is why we think that freedom of religion and other rights should be protected in a human rights Act, which could provide for that balancing to be done.

Mr PAUL LYNCH: There is another aspect of the bill that I would be interested to get your view on, and if you want to take this on notice that would be fine. You would be aware of the ethno-religious provisions currently in the Anti-Discrimination Act, and they apply essentially to Judaism and Sikhism. They are affected by this bill, but presumably Sikhism and Judaism would be regarded as a religion under it. Does that give rise to a potential problem, because you have got two different regimes dealing with the same things?

Ms NAWAZ: I think discrimination lawyers have traditionally tried to use the definition of race under the Anti-Discrimination Act [ADA], where it does cover ethno-religious groups, to try and provide some form of protection to the groups that are protected against ethno-religious discrimination. The Law Society does support the introduction of protection against discrimination on the basis of religion. I have not turned my mind to how that might conflict with the definition of race under the ADA but I am sure that could be resolved. We do think it is important that all religions are protected under the Act.

Mr PAUL LYNCH: What do you make of the explanatory notes to the bill?

Ms NAWAZ: I read the explanatory notes to the bill. I guess they provide some further context for the thinking behind some clauses in the bill.

Mr PAUL LYNCH: What is their status in terms of interpreting the law?

Ms NAWAZ: We know that in terms of statutory interpretation we will first look at the primary material, such as the bill. And then we might look at secondary material, such as the explanatory notes and also the second reading speech, to look at what was intended by the drafters of the bill. Those are just basic statutory interpretation principles.

Mr PAUL LYNCH: And it flows from that that if there is something in the explanatory notes that is contrary to the way the court interprets the Act, then the interpretation of the Act by the court is in fact what the law is?

Ms NAWAZ: Yes. It would depend on what the court was specifically looking at. I do not really think I can comment any further on that point.

Dr JOE MCGIRR: I would just like to thank both witnesses for coming and for their submissions. My first question is to both witnesses. You have suggested, or there has been discussion, that what really should happen is that we should have a human rights act to address some of the issues that have come up. A number of organisations have suggested this. We heard this morning that there is an argument that the institution of a human rights act would in fact transfer some authority for right-making to the judiciary from Parliament. In any case, whether you share that view or not, it seems to me that it could be something that would be debated and take some time. How long do you think it would take for a human rights act in Australia at the moment to become a reality?

Ms NAWAZ: I think that is a difficult question for us to answer. We are not aware whether there is the political will or party platform to introduce a human rights act, so it would really depend on whether there was support by Government for such an act. I am not sure how long it would take if there was that support.

Ms JENNY LEONG: We have got one drafted if you want to support it next week, Dr McGirr.

Dr JOE MCGIRR: I am not saying whether I support it or not; I would have to think it through. I am just trying to make a point about the time it would take. Sorry, I am not making a point—just seeking some discussion around that issue. Ms Anagnos, in your submission from the Kingsford Legal Centre you have made some comments in relation to section 22M on page seven that the section would grant organisations a broad licence to discriminate. Just reviewing section 22M, it seems to me that 22M refers specifically to a religious ethos organisation not being taken to discriminate on the grounds of religious police activities in certain circumstances. Furthermore, as we have a discussion already, there is included in section 3 a reference to the Siracusa Principles. Can you just take me through why you say it is a broad licence to discriminate?

Ms ANAGNOS: We are saying that because this could expand the types and numbers of organisations that could be exempt from other protections in the Act protecting people from discrimination on the basis of other protected attributes, it could potentially widen the groups of people in the community that could be discriminated against. I am just referring to my earlier points that religious ethos organisations provide a very broad range of services to our community. It could allow religious ethos organisations to prioritise service delivery to particular people because they are of a particular religion, rather than that they are the people most in need of that service. It could also have an impact on availability of jobs for people if the organisations could discriminate on the basis of religion or other protected attributes.

Dr JOE MCGIRR: I am sorry, can I just clarify? The wording in the submission is that it gives organisations a broad licence. I am not suggesting that it applies to an increased number of organisations. I am actually asking a question about the licence given to an individual organisation. This keeps coming up—that there is some sort of broad licence given to organisations by this section—yet the section specifically refers to an exemption on the grounds of religious belief. It is not broader than that. Furthermore, there is section 3, so I am not sure you have addressed that point.

Ms ANAGNOS: I apologise for that. I will have to take that on notice and respond.

Dr JOE MCGIRR: In your submission on page six there is reference to section 22K. The words that you use are:

This is an incredible provision, setting religion up as a shield against the consequences of committing offences ...

We heard evidence this morning—and I think this was the intention of the drafter of the bill—that this is to prevent a situation arising where council or government through regulation can make laws that are really not serious, such as, "You cannot hang up Christmas decorations," and that therefore there needs to be some provision here to allow freedom of speech and manifestation of religion. How do you balance these issues of freedom of speech? It is an issue with this sort of legislation. As I just pointed out, there are some situations where laws are not serious and criminal and yet do affect people's capacity to manifest their belief and religion.

Ms ANAGNOS: What we are saying is that this provision essentially applies to a wide range of unlawful activities and it is quite broad. There are lots of activities in the community that are not lawful that would fit into this definition. There are lots of different activities that are unlawful under various statutes in this State and it is very broadly worded. If what it is trying to get at is preventing situations like what you have described, it is unnecessarily broad to achieve even that. One of our main points in our submission is that a lot of these situations

are hard and they involve a balancing of a lot of different interests and a lot of different rights. We believe that the best way to do that, including to protect freedom of religion, is through a human rights act.

The CHAIR: Thank you, Dr McGirr. We will move on to the next Committee member. Ms Mihailuk has given her time to Mr Greg Donnelly.

The Hon. GREG DONNELLY: Thank you, Chair. I direct my question to Ms Nawaz. In the Law Society's submission, can I take it on the first page, please?

Ms JENNY LEONG: Point of order: Chair, earlier today my understanding was we had a conversation about whether members could give their time, if they were not present, to other members. You explicitly said that that was not possible; if the member was not here, then they were not able to cede their time and it would go back in the general pool. It appears now we are going back the other way. I was very happy the first day. We were working with us giving each other our time, but this morning you explicitly ruled that I was not able to do that. I am seeking some clarity as to whether we have changed the position again, or not.

The CHAIR: Fair enough. Ms Mihailuk has left for an urgent call. She would otherwise be here. On that basis, I had acceded to her request to award her time. To me, the point of difference is when people are not here and have tendered their apologies. It is very clear that they are not part of the forum today. On that basis, I would like to proceed with Mr Donnelly.

The Hon. GREG DONNELLY: Thank you, Chair. The submission, under the heading "1. General comments", on the first page, specifically I take you to the last sentence in the first paragraph, which states:

Any such review—

And this is relating to a more general review of the Anti-Discrimination Act [ADA], which is a matter that has been articulated in your submission—

should consider the operation of the ADA in full,—

Then you say—

including the current set of general exemptions available under Part 6 ...

Specifically with respect to the existing ADA, as you know it does contain exemption provisions, and those provisions have been there for a significant period of time and have been articulated by, I think, virtually, as far as I know, all or very much the vast majority of faith traditions, which have made representation to us by submission or through oral evidence, as being quite important to them. The particular example I use, which has been used on a number of occasions, is the matter of schools and educational institutions with respect to giving them some determinative power over whom they employ or not employ. Is it the position of the Law Society of New South Wales that the existing provisions in the ADA should be removed?

Ms NAWAZ: I would have to take that on notice.

The Hon. GREG DONNELLY: Okay. So you do not know; you have to take that on notice.

Ms NAWAZ: I do not know what the Law Society's position is on that.

The Hon. GREG DONNELLY: Okay. That is fine. Thank you. Can I just move then to Ms Anagnos and specifically it relates to the same theme, exemptions. Obviously, you are aware of the existing exemptions—sorry, I withdraw that: I presume you are generally aware of the existing provisions in the current New South Wales Anti-Discrimination Act with respect to exemptions.

Ms ANAGNOS: Yes.

The Hon. GREG DONNELLY: I am not quite sure whether this was implicitly picked up in your answer that you gave me in my last round of questions to point No. 4, or perhaps it needs to be made more clearly in answer to this question, but does the Kingsford Legal Centre support the removal or the diminution of the effect of the existing exemptions in the New South Wales Anti-Discrimination Act?

Ms ANAGNOS: I am not sure I can give you a full answer on that. Generally, yes, there are some exemptions that we would argue—sorry, current exemption—

The Hon. GREG DONNELLY: Current exemptions, yes.

Ms ANAGNOS: —that we would argue cause unfairness. But I am not prepared to go through all those.

The Hon. GREG DONNELLY: Could you give any?

Ms ANAGNOS: I guess what we would argue is any exemptions that currently exist, which are not proportionate to what is trying to be achieved, should be re-examined and reconsidered. So, exemptions that mean that a religious organisation can discriminate on the basis of, say, an applicant for employment's religion—

The Hon. GREG DONNELLY: Yes. Take that as an example. What would you say about that?

Ms ANAGNOS: —or not belonging to the same religion as that organisation. Sometimes that is applied too broadly and there should be an examination of, for example, the role and duties and functions of the job being advertised. So, for example, we have had to give advice to a maths teacher who was of the Muslim faith and who applied for a position as a maths teacher.

The Hon. GREG DONNELLY: Is this an actual example or a hypothetical?

Ms ANAGNOS: An actual example. The application was not considered and not even accepted because the school was a Catholic school and said no position in the school can go to someone of your faith, only to people of our faith. What we are saying is that is not a proportionate response. We are not looking at what is actually required of that role in every instance. So, you know, is it actually necessary for the maths teacher to be of the same faith, so long as that maths teacher complied with all the other policies around the school and expectations of the roles of teachers? Is it appropriate for the schools cleaner to have to be of that faith?

The Hon. GREG DONNELLY: Right. So the actual exemptions, that is what you are flagging as a problem or an issue.

Ms ANAGNOS: Yes. We need—and I am not prepared to talk about all of them—

The Hon. GREG DONNELLY: No, no, no.

Ms ANAGNOS: —but our general submission is that, really, the Anti-Discrimination Act needs to be reviewed holus-bolus anyway because it has been a very long time. Some of the things that we would want reviewed under that are around proportionality and fairness.

The Hon. GREG DONNELLY: But the removal of the absolute rights of the institution—

The CHAIR: Excuse me, Mr Donnelly. I am now moving to Ms Preston.

The Hon. GREG DONNELLY: Yes. Sure thing.

Ms ROBYN PRESTON: Thank you, Chair, and thank you, ladies, for coming in today. I appreciate your submissions. My question is to Ms Anagnos. I refer to page 9 of your submission, section 22Y on registered clubs and I want to look at the proposed bill on section 22Y, registered clubs. I will read out points one, two and three, if I may, to gain content here:

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

Then your submission raises section 22y (3), which states:

- (3) Nothing in subsection (1 or 2 applies to or in respect of a registered club if the objects of the registered club include providing benefits for persons with specified religious beliefs or religious activities.

Your comments in relation to section 22Y (3) are:

Section 22Y (3) would allow registered clubs to engage in religious discrimination 'if the objects of the registered club include providing benefits for persons with specified religious beliefs or religious activities'.

I am seeking clarification on your recommendation 11. You are saying that section 22Y should be defined by reference to the principal object of the registered club. Can you elaborate on that? I just want to get a feel for what you are suggesting here.

Ms ANAGNOS: I am sorry, I might have to take the question on notice in terms of elaborating on our response around section 22Y.

Ms ROBYN PRESTON: I am interested to hear that response. That is all I have to ask, Madam Chair, unless anyone would like to extend.

The CHAIR: Ms Preston, thank you. You have completed your questioning. Okay. We have now some open time. I will be calling the testimony at 12 o'clock so we have about 13 minutes. Are there members who have questions? Ms Leong?

Ms JENNY LEONG: Thank you, Chair. Again, I am happy for you to take this on notice because I appreciate it gets into the complexities and others have submitted in this area. There have been some submissions raising questions around the difficult position this bill might put an employer into in determining what is unlawful discrimination in balancing that in their obligations under the protection of people on the basis of their religious beliefs. One example that has been brought to my attention is that potentially an employer during the time of the marriage plebiscite may have had two employees both engaging in what was to be deemed unacceptable bullying or behaviour around their advocacy for a yes and a no vote.

But in the case of a no vote, because it was done in the context of it being part of their religious belief they would have to treat those employees differently because of the protections that this bill might provide. So it would be good to get your comments on that. But also in relation to that, the challenge that employers would have in trying to balance the protected attributes that currently exist in the Anti-Discrimination Act with the additional provisions that this bill would provide around broad protections for religious ethos organisations and religious activity.

Ms NAWAZ: It is not something that we looked at in our submission, so I will take that on notice.

Ms JENNY LEONG: Thank you, I appreciate it.

Ms ANAGNOS: I will have to provide a fuller answer on notice, but generally we understand that it can be difficult for employers to address situations such as the ones you have described. Employers have lots of competing obligations, including work health and safety obligations towards all their employees. We need to balance some of those obligations in situations where one employee might be feeling harassed by another employee on any basis, but we will reply more fully on notice.

Ms JENNY LEONG: Thank you, I appreciate that.

Mr ALEX GREENWICH: In terms of the New South Wales Anti-Discrimination Act, obviously there have been various attempts to amend it. The Hon. Mark Latham has a proposal, and I have previously sought to amend it as well. In terms of the approach to modernise the Act, what do you believe is the appropriate process?

Ms NAWAZ: The Law Society supports a wholesale review of the Anti-Discrimination Act to bring it into line with best practice and also to modernise in particular some of the language used in the Act, as well as to look at ensuring that the Act reflects changing community standards and values. We know that the last wholesale review of the Act was in 1999, so over 20 years ago, and we think that it would be appropriate for an independent body such as the NSW Law Reform Commission to engage in a review of that.

Ms ANAGNOS: We echo all those points. It has been 20 years since the Act has been reviewed in its entirety. From the point of view of needing to advise clients of their options when they are experiencing discrimination, it is a hard Act to go through. There are exemptions that exist for one protected attribute that do not exist for another. We have the other complexities of needing to advise clients of their options under State and Commonwealth discrimination law, which will then also have a different set of exemptions attaching to some attributes and not to others—different expressions of what the legal test for discrimination is. In employment, you also have to look at the Fair Work Act provisions. It is hard. There are all these protections potentially that live in different pieces of legislation and are not consistent in terms of how they express the test for discrimination and in the exemptions that they provide. It would benefit us if we could have a New South Wales Act that was modernised, more consistent and more balanced between all of the different protected attributes.

The Hon. MARK LATHAM: Back to Ms Nawaz on the point about 22Z and the question that was raised by Mr Lynch. What is the New South Wales law or program requiring congregations in churches?

Ms NAWAZ: I believe that earlier, when I was talking to this proposed section, I was saying that if there was a public health order which imposed limits on the number of people who could gather, that may be an order that would come into conflict with this section.

The Hon. MARK LATHAM: But 22Z clearly states that we are talking about functions in society that are required by State law and State programs. Is there a New South Wales law requiring people to congregate in a church?

Ms NAWAZ: Not that I am aware of.

The Hon. MARK LATHAM: Okay, thank you.

Dr JOE McGIRR: I want to come back to the issue that Mr Lynch was asking questions about, and I am not a lawyer so I am seeking clarification on it. I think that the context was that the objects—or clause 3—would somehow only come into play when the statutory part of this—I think it was clause 22M we were talking about—was first decided. Clearly the Anti-Discrimination Act has a number of different rights that are protected from discrimination, and these need to be balanced. In fact, at the moment there is no guidance on that. What is the alternative than to provide an objects clause that provides a balancing mechanism?

Ms NAWAZ: The Anti-Discrimination Act does not currently have an objects clause. As I said earlier, we would support an objects clause that contained a reference to the full gamut of international treaties that are drawn upon in the Act to provide protection against discrimination. For example, we know that there are protections against discrimination on the grounds of disability. So perhaps there should be a reference to the Convention on the Rights of Persons with Disabilities in the objects clause. In terms of how there is a balancing of rights in the Anti-Discrimination Act, my understanding is that the Act is directed towards providing protection against discrimination on the basis of various protected attributes in different areas of public life, such as employment, education and the provision of goods and services.

It does not necessarily lead to a balancing of rights exercise needing to be undertaken. The Anti-Discrimination Act deals with this in terms of the exemptions that are available to organisations under part 6. The concern with balancing of rights I think arises when we are seeing protections for freedom of religion placed in a discrimination Act, and that is why we think that it would be best to protect against discrimination on the basis of religion in the Anti-Discrimination Act but to protect separately for other human rights, including freedom of religion, in a human rights Act. In a human rights Act we believe that there would be a proportionality testing or balancing clause that would allow for the balancing of rights.

Dr JOE McGIRR: I would like to clarify something. I make the point that a human rights Act is some way off and we have an issue in relation to religious freedom. But in relation to the point that we are discussing, is the issue that in section 3 (2) the limitations specifically refer to religion? Would you support some reference to the Siracusa Principles applying more generally across the Act?

Ms NAWAZ: I would have to take that on notice.

Dr JOE McGIRR: That would be good, thank you.

Ms ROBYN PRESTON: Ms Anagnos, on page 1 of your submission at point 6 you say that:

The definition of 'religious ethos organisation' should not include organisations that get public money or provide services in areas of governmental responsibility.

So you are saying that part of the criteria is public funding. If this applied, do you think that would be a disincentive for religious organisations that have halls to apply for grants, perhaps from the State government Community Building Partnership program, to improve the asset that they may have? Would that also apply to council assets, such as community halls and things like that? Could you please provide some clarification on that?

The Hon. GREG DONNELLY: Good question.

Ms ANAGNOS: I am not sure I can answer the part of the question about whether it would potentially be a disincentive for religious—

Ms ROBYN PRESTON: You are saying if they receive any public money, then it should not apply to that organisation's asset. So, it really is a disincentive, then, for them to seek any support financially from governments to help them with grants. I am saying to you that you have set a criteria there as a benchmark to preclude them from being classed as a religious ethos organisation—that asset.

Ms ANAGNOS: To answer that, it is not just about receiving public money. It is about receiving public money to provide essential services to—

Ms ROBYN PRESTON: No, but you have put that as a point here, in point six.

Ms ANAGNOS: I am sorry about that. Above that we have expanded that if it is public money to provide essential services to the community in areas of government responsibility like health and education, aged care, housing, homelessness services—and that if this proposal creates a situation where organisations that receive that public money to provide those essential services could discriminate in who they provide the services to, then that is something that we do not agree with.

Ms ROBYN PRESTON: Just following on from your conversation there, I put it to you that if there is an organisation that is a religious ethos organisation and there is an appeal for food hampers for the homeless and

they have their hall opened up and people are wanting to come in there and they are working as part of the community as well—you are putting a criteria there, though, that if they get public grants to upgrade the kitchen in the back of the hall it then precludes them to be classified in that building as part of that organisation. And so, the Act would not apply to anything that went on in that building.

Ms ANAGNOS: Sorry, I think I might need to take that on notice. I am still thinking it through.

The CHAIR: With that, I will conclude your testimony. I wanted to thank you both very much for taking the time to firstly submit on behalf of your respective organisations and also for appearing today. We do appreciate it. I thank you within the good spirit that you demonstrated with answering the questions. You have taken a number of questions on notice. There may be additional questions which members will ask once they see the corrected transcript, so I foreshadow that that will be coming to you. You do not have to answer those questions but it would be appreciated if you did, if that was possible. Thank you very much for attending today.

(The witnesses withdrew.)

(Short adjournment)

GLENN DAVIES, Archbishop of Sydney, Anglican Church Diocese of Sydney, sworn and examined

MICHAEL STEAD, Bishop of South Sydney, Anglican Church Diocese of Sydney, sworn and examined

NEIL FOSTER, Board Member, Freedom for Faith, sworn and examined

The CHAIR: Good afternoon. Thank you very much, witnesses, for joining us today. The first question goes to Mr Dib.

Mr JIHAD DIB: Good afternoon. Thanks for the submissions and for coming in. Archbishop, it is nice to see you again.

Archbishop DAVIES: It is good to see you too.

Mr JIHAD DIB: I remember the last time I saw you was in a car park at ABC.

Archbishop DAVIES: It was, indeed.

Mr JIHAD DIB: This one probably goes more to you, Archbishop, but please feel free, anybody else, if you want to add to it. I am happy for you to take it on notice. We have heard some concerns particularly in relation to schools and education and the way that this proposed legislation could be used. I am aware of students of the Islamic faith who are enrolled in Anglican schools and I am confident that they can be and that they are enrolled in them. Is there anything in place that you are aware of that precludes students from being enrolled or teachers not being asked to work there simply because of their religion? Are you going primarily on, of course, the faith closest to the ethos and then their actual ability as a teacher? I suppose the question is: Do you see that there is a concern—which others have expressed—about this bill being used to stop students from going to schools and teachers working in, in particular, faith-based schools?

Archbishop DAVIES: Thank you for the question. I do not believe this bill in its current form would make any changes to the current practice in Anglican schools and in schools more broadly. It is easy for me to speak on behalf of Anglican schools. We are inclusive in our enrolment policies. When people come to an Anglican school or send their children to an Anglican school, they recognise what kind of education they are going to have and what the ethos of the school is. For example, chapel might be compulsory. It is compulsory regardless of your faith or lack of faith but, nonetheless, there is no coercion with regard to forcing people to change their faith or beliefs. But an openness in terms of our religious studies curriculum, we certainly have that. We accept people of all faiths. We have even had a Muslim student as a head prefect in one of our schools, so there we are.

Mr JIHAD DIB: I feel like I have a little bit of extra time. Thank you for that. That question was making sure that people are aware. As I said earlier, I know of Islamic students who go to Anglican schools and I know of people who work in the Anglican system. I do not have a concern in terms of them being excluded, obviously because of their ability and their closeness to the ethos. The other thing that I have raised with other witnesses is an issue about the protection of religion and also the issue around vilification. Where do you feel that this proposed legislation sits in terms of vilification protection on the grounds of religion?

Archbishop DAVIES: Vilification, which has various meanings, is something which we oppose. To incite hatred or violence against another person is an opprobrium to us and I am sure to all people. With regard to that, vilification has been very difficult to nail down, and the language of hate speech, along those lines. I do not see anything in this bill which would certainly cause that. The word vilification actually comes up in other legislation with regard to that, but here in this bill it would not protect people who sought to vilify others. Expressing views with regard to religious propositions, philosophies or an understanding of the ethos, the tenets, beliefs and doctrine of faith is not to be seen as vilification. But when you bring hatred towards a particular individual, of course that is completely out of court and should never be condoned. We certainly would not condone it in any of our schools or in any of our churches.

Mr JIHAD DIB: I absolutely agree with you.

The Hon. GREG DONNELLY: I have a general question to open up. Perhaps if I direct it to the hierarchy, so to speak, to the Anglican Church and then to the academic. I will divide it up in two ways. First of all to the church, with respect to witnesses who have given evidence to the inquiry either through submission or oral evidence, a number of them oppose either in part or in full the proposed bill. They say that the New South Wales Parliament should wait until a full and total review of the current New South Wales Anti-Discrimination Act is undertaken before it deals with this matter of religious freedom/discrimination. I am wondering if both of you would like to comment on that proposition, that we ought not proceed on this issue, that there needs to be a full review and only at that point is this matter entertained and dealt with.

Archbishop DAVIES: Thank you, Mr Donnelly. We have been waiting a long time. There was a Law Reform Commission for New South Wales 20 years ago, which made some recommendations along these lines. We have been waiting in the Federal sphere for some time. We have had the Ruddock report and we have a religious discrimination bill, which is sitting somewhere in the back rooms of the Coalition, I presume. The procedure there is going to take a while. COVID-19 has certainly interrupted the flow. But, meanwhile, around the world there are court cases and situations where we are spending a lot of money and there is a lot of anguish; even in our own country, in Tasmania, of course, with the Porteous example. We find that now is the time, and I am very grateful to Mr Latham for presenting this private member's bill.

Perhaps I should express sorrow that the major parties did not come to the party when they were in power so that we might actually get some action here. The Ruddock report identified that New South Wales is behind and now is the time for the New South Wales Parliament to address this very sensitive, significant issue in balancing the rights of people—not giving a special right to religious people, but actually recognising that in terms of the International Covenant on Civil and Political Rights [ICCPR] and also the Siracusa Principles—so that the restrictions and derogations of rights are seen in a balanced capacity. I would be surprised that anyone should think that that delay would be the appropriate response.

The Hon. GREG DONNELLY: Associate Professor, do you care to comment on that proposition?

Associate Professor FOSTER: In general terms, our view would be the same as that expressed by the Archbishop, that this is acknowledged by most people who have commented on the area to be a gap in the law of New South Wales. Obviously the debate is about the precise terms of the current bill and whether it is appropriately meeting those problems. But, generally speaking, the idea that there needs to be protection of religious people against discrimination in New South Wales would be supported. I would hope that this bill would either go forward and be enacted or provide the impetus for serious legislation to be put forward. Yes, one can talk about making the whole legislation better and all those sorts of things, but the saying is that sometimes the perfect is the enemy of the good. If we can make some good changes and those can be done in the near future, that would be better.

The Hon. SCOTT FARLOW: Your Grace, thank you for being here. I am interested in the slight criticism you made in terms of the recommendations from 20 years ago. If this Committee were to abandon its work today and just pick up on that Law Reform Commission recommendation, would that be sufficient in your mind to address the problems that you see when it comes to religious freedom?

Archbishop DAVIES: No, I do not think so, because a lot of things have happened in 20 years, both nationally as well as in our State. It would be foolhardy just to go back to a report and endorse that without any thinking. Look at that report, by all means, but look at where we are today. This particular bill picks up some of the issues which have arisen in the last 20 years and even more recently, of course. So, no. If I can say this gently, parliamentarians need to do their work in finding the best bills to present to the Parliament and the best Acts, therefore, to pass for the good of all citizens of New South Wales. That, should I say respectfully, is your job as parliamentarians. I am very glad to assist you in the furthering of that aspiration.

The Hon. SCOTT FARLOW: We are thankful for the assistance, Your Grace.

Bishop STEAD: Can I just add that 20 years ago we did raise some objections to the form of the proposal that came out of the NSW Law Reform Commission, because we felt that the treatment of religious organisations was not sufficient. We are already on record as not being supportive of that and, certainly, 22M in the current bill is a significant improvement on what was proposed 20 years ago.

The Hon. SCOTT FARLOW: Further to that point, one of the suggestions that has come before the Committee is that making religious belief and religious activity a protected attribute under the Anti-Discrimination Act may be a sufficient step for the Committee to take. Do you have an opinion as to whether that would be sufficient?

Bishop STEAD: In a sense, that is really the point that we made 20 years ago. It is not sufficient because unlike some of the other protected attributes which are personal attributes, religion is an attribute which is often expressed in association with others. Therefore, the place of religious organisations needs to be appropriately taken into account, so without something like a 22M—it does not have to be the current form of the 22M—there needs to be some kind of recognition that when religious people get together to form a religious charity, this is actually something that also needs to be protected. That cannot be done just by saying religious belief by itself is a protected attribute; it needs to recognise the manifestation of that belief in association with others.

The Hon. SCOTT FARLOW: I put to you further, Your Grace or Bishop, there has been some criticism in terms of the protections under the Anti-Discrimination Act being extended to a nonperson. Is there a submission you would like to make on that point?

Bishop STEAD: Again, if I could, I would like to push back on some of the commentary I have heard around the phrase that human rights are for human beings. It is a cute little phrase but it actually does disservice to international jurisprudence around this very question because it is commonly recognised that the manifestation of religion is done in association with others. It is not just a private belief you manifest and to manifest it does not just mean that I stand on a corner and read my Bible out loud, I manifest it by doing it with other people. As soon as you recognise that, as soon as you recognise a freedom of association not just for religious people but for people generally, you cannot just confine that to individual protected attributes, which is what the phrase human rights are for human beings is trying to do. So, I agree, human rights are for human beings who sometimes get together and manifest their beliefs by forming organisations to do religious acts for a religious purpose. The Act is not doing anything that is foreign to international jurisprudence on this or international law on the recognition of religious organisations. Their right to manifest that belief is very clear in international human rights law.

The Hon. SCOTT FARLOW: Associate Professor Foster, we have seen in recent times the issue with the Lachlan Macquarie Institute, the membership of its board and the intersection it has had in terms of working conditions, PricewaterhouseCoopers being the employer at the time. What you think something like this bill would do for those sorts of circumstances where somebody had a membership of an organisation outside of their work, as I take it that you do in your position on Freedom for Faith. Do you think this bill could help in those sort of circumstances?

Associate Professor FOSTER: Yes. I think it is a bill that would work for the general good in a situation where it would at least make an employer think twice before saying, "Oh well, you are a part of this group which I do not agree with or I think is unpopular and I am going to remove you from your employment or I am going to provide a discipline against you." This legislation would provide some assistance in those circumstances. Of course, it does not only apply in those cases. It applies in a number of other situations. We have heard examples of people being sacked from a position in a cafe because somebody did not like the fact that they talked to someone about their church meeting and they objected to religious people working in the cafe. Somebody might be sacked because a Muslim lady might want to wear a headscarf in a situation. This legislation is useful for that sort of situation and it is important to protect those sorts of rights.

The Hon. SCOTT FARLOW: Thank you very much.

Mr ALEX GREENWICH: Thank you, gentlemen, for joining us today. My questions will be to Archbishop Davies and Bishop Michael Stead. At the outset, I thank you for the work that you do in my electorate, particularly for some of the most vulnerable groups. The HammondCare aged care home for people who are homeless is truly changing lives and is something that we are really proud of in Darlinghurst.

The Hon. GREG DONNELLY: Hear, hear!

Mr ALEX GREENWICH: My question has to do with an aspect of the Anti-Discrimination Act to deal with private education authorities. It specifically targets and names private education authorities to be allowed to discriminate against homosexuals and transgender people regardless of whether it is a religious school or not. My question is: Do you think that is appropriate or is a positive protection for religious belief or religious practice more appropriate?

Bishop STEAD: Can I clarify the question: Are you referring to the current provisions of the Act, not the bill before us?

Mr ALEX GREENWICH: That is correct.

Bishop STEAD: Yes, it is true that the current provisions of the Act have half a dozen specific exemptions for private educational institutions which effectively are a complete exemption or carve-out in a whole range of areas including transgender and sexual orientation. I do not know that that question is directly relevant to this inquiry because this is about the religious discrimination aspects of the bill. It may well be appropriate to have some overhaul of the bill that deals holistically with those kinds of questions, but this bill before us does not do anything to enable discrimination against transgender or same-sex people, so I am not entirely sure of the relevance.

Mr ALEX GREENWICH: The terms of reference for this inquiry do have regard to the rest of the Act and obviously in Mr Latham's bill he does not specifically target or list the way that this occurs under the private education's authority. My question, which I am happy for you to take on notice, is whether or not it is appropriate to have a targeted discrimination against groups or whether it is a more preferable option to have positive religious belief and practice provisions?

Bishop STEAD: I am not sure I would characterise it as a targeted discrimination against groups because the structure around private educational institutions is just a complete exemption from the operation of the Act.

That is, I guess, a clumsy way of trying to provide a balance for primarily religious schools, which are the majority of the private educational institutions, in order to operate in accordance with their ethos. It reflects an earlier time where there was not a lot of work done about how to appropriately balance those rights. Yes, I would love to see a better appropriate balancing of rights, but it is not going to be done within the bill that is before us.

Mr ALEX GREENWICH: We have had some discussion on this. We will get further information and people will form different opinions in this Committee, no doubt, around public health orders. Would it be your position that public health orders, particularly in the COVID-19 pandemic, should have primacy and that it would not be appropriate for a religious gathering to be allowed that would contravene a public health order?

Archbishop DAVIES: We have certainly experienced that. Before the Prime Minister in working with the National Cabinet closed all religious places, I actually closed them in the diocese of Sydney a week before. As did a number of my colleagues, other bishops around the province of New South Wales, with whom I have had strong connections and conversations with when we realised the seriousness of the pandemic. We are here for the public good. We are here for the good of not only our own people who come to church but for society as a whole. Therefore, when I closed the churches—and we have kept the churches closed until they have been able to be opened—we have had Zoom livestreaming church services through the past number of months since March and now we have restricted opening of our services with all the COVID safety precautions in place: temperature checks, social distancing, cleaning, contact details, hand sanitisation et cetera. We recognise the importance of public health and we recognise, therefore, the part that we play as citizens in the State with regard to that.

Associate Professor FOSTER: Could I make a comment, Mr Greenwich, briefly? Under section 54 of the Anti-Discrimination Act it says that nothing is made unlawful by the Act if it is necessary to be done in accordance with legislation. In my view, it is pretty clear the public health orders would be the other legislation so that the effect of the Anti-Discrimination Act would be that it would not override public health orders. It does not actually override other the laws that are in force.

Mr ALEX GREENWICH: The issue here is that public health orders are administrative tools rather than legislative tools.

The Hon. MARK LATHAM: They are covered too.

Associate Professor FOSTER: Under 54 (1) (b) it talks about regulation, ordinance, by-law, rule or other instrument made under any other such Act, which I think would include a public health order.

Ms TANIA MIHAILUK: It does.

The Hon. MARK LATHAM: Thank you to the panel for the submission and your time today. Yesterday we heard from the Bishop of Newcastle who seems a really nice guy. I am glad for that because my family joins his flock next month.

Ms TANIA MIHAILUK: Are you trying to get on the board?

The Hon. MARK LATHAM: Do I declare an interest? The church up there is truly beautiful, as I am sure his teachings also are, but he did make the point in opposition that the bill does too much to protect the status quo. In drilling into that, part of the suggestion was that the status quo of the Anglican Church overall has perhaps, in his thinking, unlike the diocese of Newcastle, not done enough for what might be thought of as minority groups: Indigenous, transgender, the LBG cohort and so forth. How would you reflect on that, in particular, if you heard his evidence yesterday or read his submission?

Archbishop DAVIES: I take it the Bishop was speaking generally, rather than something germane to this bill before us. Is that correct?

The Hon. MARK LATHAM: Yes, his observations were certainly more general than specific. That is true.

Archbishop DAVIES: It probably would be true to say that that the Bishop of Newcastle and I have differences of opinion on various matters.

The Hon. GREG DONNELLY: He said that about you too.

Archbishop DAVIES: I am sure he did. But it would also be true to say that he is in a minority, not only in the province of New South Wales. We have seven Anglican dioceses in New South Wales and we have 23 dioceses in Australia, and he certainly is a minority view there. But he does like to express his views vocally whenever he has an opportunity and he is welcome to do so. We have a very strong social action understanding with regard to our faith and we see that, as Mr Greenwich mentioned, in terms of St John's Darlinghurst and HammondCare there and Anglicare, of course, and the work we do for homeless people and refugees. There is

a whole range of things that we do which are non-discriminatory in terms of our application of our services to anyone who is in need. That is certainly our position and our concern for all people, who regardless of gender, race, ethnic origin, language et cetera are made in the image of God. That is our belief and therefore we honour them and seek to love them as best we can.

The Hon. MARK LATHAM: I echo the comments of Mr Greenwich in thanking you for the work of those organisations. They have done amazing work in the welfare space in south-west Sydney, which I have known over decades now. We really appreciate it. Bishop Stead, I will come to you on the point that was mentioned by Professor Foster about section 54. On several occasions now Mr Greenwich has come to the supposition that my bill, if enacted, could be used to override the COVID health orders to allow people to sit next to each other in church and other congregations. Does not section 54 just make it very clear that there is no override of existing laws, regulations and bylaws under the Anti-Discrimination Act, which is a commonsense proposition, and this failure to override would also apply to some of the things that are being said about section 22Z of my bill?

Bishop STEAD: Yes, I would affirm what has been said by my learned colleague that that clearly is the effect of section 54. I think I would like to make two related points. One is that section 54 means that this bill will not override other instruments, including public health orders. The other point to make is that this bill will not override other existing rights established by other parts of the Anti-Discrimination Act. It is very clear that this will not give a licence to religious groups to discriminate against LGBTI people, for example. I have heard that suggestion made, but it is very clear that that is not the purpose nor effect of the proposed bill, as well as the effect of section 54.

The CHAIR: The Hon. Mark Latham has one minute remaining.

The Hon. MARK LATHAM: Just on that, and coming specifically to the intent and the meaning of 22Z, this is the opportunity to say that in the administration of State laws or programs, something unfair has happened in terms of religious discrimination. What of the scenario with government schools, for instance? Government schools are chartered with funding and the law to provide education, but there have been instances—perhaps not through your church, but other churches—where, up the coast of New South Wales, religious organisations that were using their church hall on a Sunday were banned from those government schools because they mentioned that they did not support same-sex marriage or they defined homosexuality as sinful. Bishop Stead, do you understand the purpose of section 22Z to be to deal with those issues, given that there is no State law about the way in which the letting out of those halls should be conducted?

Bishop STEAD: Yes, certainly that would be the effect of section 22Z. It is actually an unusual feature of the New South Wales Act that it does not apply to the State. The Federal anti-discrimination Acts all apply to the acts of the Federal Government and also to the State Government to the extent that it is carrying out a federal program. Those Acts say, "Well, what's good for the rest of society is also good for the Government." It is odd that the New South Wales Government should be saying, "Yes, for the rest of society you cannot discriminate on the basis of religion, but we want to reserve the right of the State to be able to do that." Section 22, I think, is making the important statement that the State ought to be bound to the same principles that the rest of its citizens are bound to and, in particular, not to be able to use its grant-giving powers or access to public buildings in a discriminatory way against faith groups.

The Hon. MARK LATHAM: It is only in 22J—sexual harassment.

Bishop STEAD: Yes.

The Hon. MARK LATHAM: For some reason it was in there, but not other parts of the Anti-Discrimination Act.

Bishop STEAD: Yes.

Ms JENNY LEONG: I want to follow on from a previous line of questioning to Dr Davies but also if you want to jump in, Bishop Stead. Would you support other organisations associated with protected attributes that are currently in the Anti-Discrimination Act—for example, women, lesbian, gay, bisexual and transgender groups and organisations—getting the same exemptions and protections that religious ethos organisations are afforded in the bill?

Archbishop DAVIES: Do you mean because of their religion, or because of their status?

Ms JENNY LEONG: No, I mean because of their status. I appreciate that we have discussed the fact that people of faith will gather in congregations and believe that their faith intersects with all elements of their life. I would suggest that people from certain race and sexuality groups would also believe that intersects with every other part of their life and joining in congregation with others is part of that. Do you believe, given there is

an argument around organisations now being included within the Anti-Discrimination Act, that those other protected acts should have similar organisations associated with those groups afforded the same exemptions?

Archbishop DAVIES: Because humans are social beings, we have been made in such a way we have social interaction like that. We certainly support the congregations and meetings of people of like-minded attributes that you mentioned. I would want to have an even hand with regard to protections for organisations, whether it be faith groups or whether it be ethnic groups or transgender groups or intersex groups—whatever it might be. I would have no difficulty with regard to providing a similar kind of protection for them.

Ms JENNY LEONG: But could you see the challenge in a scenario where religious belief was a protected attribute and disability was a protected attribute and, for example, a disability organisation then chose to want exemptions under the Anti-Discrimination Act to not allow people of faith in their organisation? I am using that because it is an absurd example, but you appreciate that that would cause problems because of the intersection between what is protection for groups at risk of discrimination. Let me put on the record I absolutely support the idea of people being protected against discrimination on the grounds of their religious beliefs. I think it is absolutely essential that we update our laws to include that. I would prefer we do that in a human rights Act. But do you appreciate the challenge we would come to if every protected attribute in the Anti-Discrimination Act also received exemptions to not have to comply with other parts of the Anti-Discrimination Act?

Bishop STEAD: I am not sure I would characterise what this bill does as providing an exemption to not comply with other parts of the Act.

Ms JENNY LEONG: Can I take one example, then? My understanding and the definition at section 22K protecting religious activities that are unlawful but are not punishable by imprisonment—I appreciate the comments earlier around the health orders, but I think there is a contradiction between the section that is being referred to and the definition that says that religious activities that are unlawful but not punishable by imprisonment are protected. An example of an offence that is not punishable by imprisonment would be the damaging or desecrating of a protected place. In that circumstance, Bishop, if a member of your diocese was able to write their religious beliefs on, say, the Sydney Opera House or Parliament House, they could act in what they see as a religious activity and then that would be a protected act under that. But if someone was to write a different message, that would not be protected.

Bishop STEAD: Can I respond to that? I think that is actually a mischaracterisation of the operation of section 22K in relation to the rest of the bill. Section 22K does not provide protection for all religious activities. It provides a definition of what a religious activity is. Ultimately, whether it is reasonable or unreasonable to protect that activity is going to be determined by the other relevant provisions around direct or indirect determination. If there was a prohibition that says nobody can scribble graffiti on the Sydney Opera House, it is not direct discrimination against people of religion because it is not applying to the expression of religion or religious messages. Therefore, it would be determined under the sections that deal with indirect discrimination.

Indirect discrimination, in all of the provisions in the bill, includes a reasonableness test. Then the question for the courts to determine is: Is it reasonable for a statutory authority to say you cannot put graffiti on the Opera House even if it has a disproportionate effect on people of religion who want to scrawl religious graffiti? Undoubtedly, the court is going to say, no, it is reasonable, the purpose of that prohibition is not targeted against people of religion. Therefore, even though it may well be defined as a religious activity, it is not going to be a protected religious activity. I think the question confuses the distinction between the definition of a religious activity and what will ultimately be a protected activity.

Ms JENNY LEONG: Great. Chair, I have one more minute, is that correct?

The CHAIR: No, you are out of time.

The Hon. GREG DONNELLY: Time is up.

Mr PAUL LYNCH: Ms Leong can have my time.

The CHAIR: Please proceed, Ms Leong.

Ms JENNY LEONG: Thank you. To go to the issue around article 18 (3) of the International Covenant on Civil and Political Rights [ICCPR], I assume you are referring to my acute comment yesterday about human rights being for humans, so I appreciate you listening to the discussion. The bill before us chooses to highlight article 18 (3) as opposed to highlighting, for example, all of article 18, or even indeed article 22 around freedom of association, which obviously directly interacts with people's religious beliefs, as well as their ability to join trade unions and other things. We have heard from others in their submissions that while discrimination law is specifically put in place to protect individuals around the idea of freedom from discrimination, and therefore protected attributes, but there are obviously also other spaces for human rights law to be enshrined in our

legislation that would actually provide protection around issues of freedom of association and other rights as set out in the ICCPR.

Given the Hon. Scott Farlow's comments around the ability for the Government potentially right now to act and just insert protection around discrimination on the basis of people's religious beliefs into the Anti-Discrimination Act as it stands, but then engage in a much more wholesale review of the Anti-Discrimination Act, which would allow consideration of the complexities around religious organisations and association and expression, I wonder would you be supportive if the New South Wales Government were to act in that way to be able to insert as a first point the protection of individuals of faith to not be discriminated against at a broader society conversation about what we need to do in relation to the complexities around association, and indeed, freedom of thought, conscience and the manifestation of one's religion?

Bishop STEAD: In essence that question goes back to the complaint that we had with the recommendations from 20 years ago, which is if you only deal with individuals first and say, we will worry about the institutions later, you are in the situation where you are indirectly constraining the religious freedom of the institutions. You will be in the situation where religious schools will no longer be able to say we would like to prefer the preference of Muslim teachers at Muslim schools and Christian teachers at Christian schools. That is the issue that needs to be resolved and you—

Ms JENNY LEONG: Does the exemption not currently allow that?

Bishop STEAD: It only applies for schools. What I am saying is—

Ms JENNY LEONG: Where would you like it to also apply to?

Bishop STEAD: Anglicare, for example. Anglicare may well like to say we want to employ a whole range of pastoral workers and pastoral carers and we would like to preference the employment of Christian staff because we think that is how we manifest the love of Christ, by having Christian people acting in those places.

Ms JENNY LEONG: Would that extend to people who are accessing those services?

Bishop STEAD: That has not been, that is not how—

Ms JENNY LEONG: Will this bill enable that to extent to that? I appreciate it does not currently.

Bishop STEAD: It is more that at the moment there is no prohibition on religious discrimination. It is clear from its practice that Anglicare does not discriminate on the basis of religion—

Ms JENNY LEONG: But this bill would allow determination, for example a lesbian couple rocking up to a soup kitchen, to be denied access to that soup kitchen if it was being offered by a religious ethos organisation that did not believe in the sanctity of their marriage.

Associate Professor FOSTER: Can I comment on that, Ms Leong? The fact is that we do not have any evidence of religious organisations turning away people in need on the basis of their different characteristics, transgender status, or whatever—

Ms JENNY LEONG: With respect—

Associate Professor FOSTER: And that—

Ms JENNY LEONG: —Associate professor, I appreciate that. I would be interested to know the Anglican Diocese position.

The Hon. GREG DONNELLY: Point of order: The associate professor started to speak and was elucidating his answer. The member rudely jumped in and cut him down. I submit that the associate professor should be able to complete his answer.

Ms JENNY LEONG: To the point of order: With the greatest respect to the associate professor, the specific questioning was around the Anglican Diocese and the Anglican Church offering of social services to community members. I appreciate that, and I am very happy to hear your contribution after, but I was specifically wanting to know how that would relate and whether or not the witnesses believe that this bill would allow for that decision. I am certainly not suggesting that that is currently the case. I think there are examples of concerns around that, but that is not what I am suggesting. I am saying would this bill allow—

The CHAIR: Ms Leong, I have heard your—

The Hon. GREG DONNELLY: Time is up.

The CHAIR: Excuse me. Ms Leong, I have heard your contention to the point of order. I would like to invite Associate Professor Foster to respond. Thank you.

Associate Professor FOSTER: I just wanted to say, because it is not unlawful at the moment, if people were minded to do this sort of thing they could be doing it, and they are not. The evidence is that that does not happen

The CHAIR: Dr McGirr?

Ms JENNY LEONG: Sorry, Chair. Is the Bishop able to—

The CHAIR: Your time has expired.

Ms JENNY LEONG: But is the Bishop able to respond or not?

The Hon. GREG DONNELLY: No, time is up.

Ms TANIA MIHAILUK: Time is up.

Ms JENNY LEONG: Because the Bishop was about to respond.

The CHAIR: Bishop or Archbishop, if you wanted to respond?

Bishop STEAD: I could respond in a sentence.

The CHAIR: Please.

Bishop STEAD: Which is to say that the bill before us no more enables that practice than the status quo.

Ms JENNY LEONG: I appreciate that. Thank you.

Bishop STEAD: It would be presently able for any of the institutions to discriminate in the delivery of service. They do not. That would continue to be the case under the bill.

Ms JENNY LEONG: I appreciate that. Thank you.

The CHAIR: Thank you. Dr McGirr?

Dr JOE McGIRR: Thank you very much, and I thank the witnesses for appearing and for their detailed submissions. In particular, I note that there has been some excellent commentary about some drafting errors that we need to pick up in relation to some clauses. It is on the final page of the submission from the Anglican Diocese. Clearly they were drafting errors, so thank you for being so detailed about that. I hope we can pick those up. My question is first to Associate Professor Foster, but I will put it to all the panellists. It is in relation to this contentious issue that somehow this legislation provides a shield for unlawful activity. Associate Professor Foster I think you addressed this in section 7 of your submission. I would appreciate you elucidating that a bit further, and I welcome any other comment on that issue from the other panellists?

Associate Professor FOSTER: Thank you. My view is that it comes back to some extent to what we were just saying, that the definition of religious belief does exclude matters that are subject to the penalty of imprisonment. It is clear that this allows—

Dr JOE McGIRR: I think it is the definition of protected activity.

Associate Professor FOSTER: Oh, well.

Dr JOE McGIRR: The definition of protected religious activity.

Associate Professor FOSTER: Yes, it is the definition of religious activities. You are right, thank you. I am sorry, Dr McGirr. I agree with what Bishop Stead said, that the fact that such beliefs are regarded as religious beliefs does not automatically provide protection, you still have to look at whether other parts of the legislation allow those religious beliefs to be acted upon or not. This whole context of this amendment is set in the context of legislation where section 54, to come back to what I said before, excludes that overriding other laws. While you may regard someone's belief that is unlawful but not subject to imprisonment as a religious belief, that is not the end of the question of whether that is going to be protected.

It will only be protected in circumstances that are set out elsewhere in the legislation, and as I say, it is part of legislation which says you cannot protect. Under this Anti-Discrimination Act it will not override the provisions of other laws. So I think that that simply means that you can take this religious belief and you weigh it up to account and all those sorts of things. And in some situations, as Bishop Stead said, if it amounts to something like indirect discrimination, a court will have to make a decision as to whether it is reasonable or not that this be accommodated. I am sorry it is a little bit around about, but I think without a more specific example that is the best I can do on that one.

Dr JOE McGIRR: No, that is good. In effect, the bill is only to provide people with protection from religious discrimination, not protection from prosecution or the ability to be prosecuted or brought to account for other aspects.

Associate Professor FOSTER: That is a very good way of putting it, Mr McGirr. It is not designed to provide protection against other laws, it is providing protection against discrimination.

Dr JOE McGIRR: I think it is an important point, just because it does keep being raised in evidence that somehow this creates a shield. Thanks for clarifying that point. I do not have any further questions at this stage, Madam Chair.

Ms TANIA MIHAILUK: Thank you for your attendance today and your submissions. We heard earlier from the Law Society who are proposing the concept which is what you were referring to, Your Grace, which was being considered by the Law Reform Commission 20 years ago about the idea of adding simply discrimination into the ADA Act as an additional attribute and the Law Society also proposed the idea that religious belief could be separated, or the right to freedom of religion could be separated from religion and that would be considered, should be considered, separately in the human rights legislation, whilst religion would be protected by the ADA. I just wanted your views, and perhaps it might be better for you Bishop Stead, or for you professor, or Your Grace, what your views are on whether that is feasible, separating two concepts?

Archbishop DAVIES: I will just make preliminary remarks and my colleagues can add to them. For people of faith, it is not something that you leave at home when you walk out the door and go to work. It is something which identifies you, characterises you in every aspect of your life. As a Christian I am a Christian not just in my job when I am in a church service, in the pulpit, but in every aspect, when I am talking to my grandchildren, when I am talking to my neighbours, that is the identity of who we are, and that is true of most faiths, if not all faiths. Separating the religious organisation from religious belief of a person is not possible because as we talked before the congregation, because we are social beings who gather together, organisations reflect our religious beliefs in terms of whether it is education, or running youth camps, or whether it is in Anglicare and in social action. That is the connection. So, separating them out, I think, would be unhelpful.

Associate Professor FOSTER: Can I make a brief comment, Ms Mihailuk? The suggestion that you can simply, as it were, drop religious belief into the ADA as a separate protected attribute is just not that simple. When you look at the structure of the ADA at the moment it has a separate part for each different protected attribute and within those parts there are crafted provisions that provide exemptions and adjustments depending on the characteristics of that protected attribute. There are some protections, for example, in relation to superannuation laws that relate to a superannuation law that might differ on the basis of age or perhaps gender or something like that. There are provisions that say you can discriminate in terms of race if you want to cast a movie that stars a person of a particular race. Every part of the Act that has protection for different attributes includes within it the sort of stuff that we find here in proposed part 2B balancing out those interests with other interests in the legislation.

I do not think in any sense it would be a simple task of just popping this into one provision and saying it is religious belief and we will regard it as protected. Anything that follows the model of the current legislation would have to include in what areas is it protected, where are the exemptions, where are the balancing clauses that balance this with other rights? And, so, that would be response to the idea of simply just change one provision and it is all okay. I just do not think that would work, it would not be consistent with the current Act and it would not provide the balancing that is present at the moment with all the other attributes where all have different things that protect and balance those rights with others. As with the other view that you need a general human rights piece of legislation, that is a topic for another whole inquiry and all that sort of thing and we have already had a number of those, I think we will leave that.

Bishop STEAD: It is also worth mentioning that it has proved to be notoriously difficult even to think about consolidating Acts. The Gillard Labor Government intended to consolidate all Federal antidiscrimination law into a single Act. They worked on that for several years and ultimately abandoned the project. It just demonstrates the complexity of trying to have an omnibus bill. That is what our bill is, but an omnibus bill which is divided into parts because of the complexity, particularities and the peculiarities of applying protections for protected attributes. You really have to do them on a case-by-case basis. What we have before us is probably the best in the current circumstances and it certainly would not be appropriate to postpone the protection against religious discrimination for years and years, which is what it would take, in order to come up with one simple consolidated ADA.

Ms ROBYN PRESTON: I am happy to gift a portion of my time.

Ms TANIA MIHAILUK: Thank you. All I wanted to ask, earlier Mr Donnelly referred to the submission by the bishop from Newcastle and I think he was telling us something in the order of his congregation was about 5,000 people. I am not sure if that is accurate.

The Hon. SCOTT FARLOW: Across the diocese.

Ms TANIA MIHAILUK: Yes, across the diocese. And, that he was reflecting their views. I know there are about 800 organisations in your submission? What would be the size of your dioceses and perhaps the rest of the dioceses?

Archbishop DAVIES: In the census there are about 16 per cent of Anglicans in this State. That is people who tick the Anglican box. In terms of people who come to church in the diocese of Sydney, of course it varies from Sunday to Sunday, but we work on basically about 60,000 - to 70,000 people would come in the diocese of Sydney. It may be helpful for the Committee to understand too that my title as archbishop means I am metropolitan of New South Wales. I speak on behalf of all the dioceses, including Bishop Stuart's, as metropolitan, and I am also the President of NSW Council of Churches and that is six other denominations—I know you have the Presbyterians coming today—the Presbyterians, Baptists, Salvation Army, Christian Reform, Congregational Church and the Churches of Christ. They have seen our submission, they have all endorsed that submission: Unless they did a separate submission, as Bishop Stuart did. I think you can rest assured that the vast majority of Anglicans and Protestants in New South Wales are supportive of the positions that I have been putting forward. I am sure that Archbishop Fisher spoke eloquently himself and he and I normally work together on these issues as we do with the orthodox churches and other faiths as well. We have an opportunity to work together on issues of common concern.

Ms TANIA MIHAILUK: And this would certainly be an area that people are concerned about their rights?

Archbishop DAVIES: Absolutely. Matters of faith are critical to a person's identity.

Ms ROBYN PRESTON: Thank you for your in-depth submissions. I appreciate the trouble you have gone to, it has been an excellent effort. I draw your attention to page 22, Your Grace and Bishop Stead. You talk about the concern that others have had have not been in support of this bill on not considering that it is acceptable for religious institutions to receive public funding or assets and that should not be the case. They should be void of any government funding. I would be interested to hear your view and position in relation to that, if you would like to expand on that?

Ms JENNY LEONG: Point of order: apologies for interrupting, archbishop. I do not believe that Ms Preston's question reflected the submission that was before us.

Ms ROBYN PRESTON: I am reading it word for word.

Ms JENNY LEONG: The comment in relation to the idea that these religious organisations should not receive public funding. That was not the submission. The submission was that they should not be provided the protections as set out if they were in receipt of public funding.

Ms ROBYN PRESTON: Madam Chair, can I please read the word for word on section 89, page 22?

The CHAIR: Ms Preston, your contention is that you are reading from the submission?

Ms ROBYN PRESTON: I am actually reading from the submission.

The CHAIR: On that basis I allow the question to proceed.

Ms JENNY LEONG: Is Ms Preston able to tell us which submission she is reading from?

Ms ROBYN PRESTON: It is the submission by the Anglican Church Diocese of Sydney. I have two of the witnesses in front of me here and I am asking a question in relation to their submission. If you would like to turn to page 22, you will see what I am referring to. Do you have that in front of you?

Ms JENNY LEONG: Yes, I do, thank you.

The Hon. GREG DONNELLY: For the waste of time that has just taken place, as a point of order, can I ask that the member's time be extended?

The CHAIR: Mr Donnelly, I ask that you come to order.

Ms ROBYN PRESTON: It states:

... it is simply unacceptable that religious institutions which receive public funding for the provision of education, health or welfare services are not required to comply with State Government policies.

Would you care to comment on that part of the submission?

Archbishop DAVIES: Thank you for your generosity in giving Ms Mihailuk extra time, and you have lost some time with this debate. The submission comes under Bishop Stead's name, so I might refer to him to answer that question for you.

Bishop STEAD: Thank you. We are seeing the suggestion being put that, to the extent that religious institutions are in receipt of government money, they should be required to comply with government policies. That is the suggestion in paragraph 89 and I believe it has been put in other submissions before the inquiry. I do not have them before me so cannot prove that but that is my recollection from what I have read. For me, that strikes at the very heart of what a religious institution is. A religious institution like Anglicare, which might receive some government funding, does not cease to have its religious character merely by the fact that it might receive some money from the government. The effect of those kinds of rules is to turn around and say to a religious institution that they need to choose to be secular at the point at which they do those things or not take money from the government.

To take it to the extreme you could say to schools that if they are going to receive any government money then they have to completely comply with our State Government policies, including that they cannot require people to go to chapel and things like that. That undermines what those institutions are and is a form of reverse religious discrimination where the State is discriminating against religious institutions by requiring them to not act on the basis of their religious beliefs when it comes to the way that they employ staff and the manner in which they deliver those services. This is not a hypothetical case; we have seen cases overseas of exactly this thing being done. In paragraph 91 we point to the example of Ireland as a case in point where the government has used equality compliance as a way to force institutions to either exit the field or else act in accordance with government policy. Fostering services and adoption services are a good example. Some Catholic institutions have been required to exit the field rather than compromise their own religious beliefs on who would be the appropriate parents for an adopted child.

The CHAIR: I have a question for Associate Professor Foster. It is a bit of a technical one, if you would allow me that.

Associate Professor FOSTER: Oh, I love those.

The CHAIR: You made a comment that I was interested in, saying that the purposing of the bill is to religious beliefs and activities, and that in each of the parts of the Act in which it would sit are custom and tailored to the particular discrimination that is the focus of those individual parts. I am interested in the comment about the principles of the Act, which will refer to all the other discriminations that are inside the Act. My first question is: Is there anything that is inconsistent in doing that through the bill, not as a technical matter but kind of retrofitting section 3 into that? And did you see that it would apply—maybe you will need to take this question on notice—in the way that it is cast, will it cast its application more towards one anti-discrimination lens than another? I am just interested in your commentary and you can take it on notice if that is better.

Associate Professor FOSTER: Thank you very much, Chair. I will make a brief comment. I have to say that, despite my general support for the bill, I can see an argument that subsection 3 (2) perhaps ought not to be there but would be better placed at the beginning of part 2B—that is, the reference to article 18 is particularly in reference to religious freedom rights and that is the one that is addressed by the new part 2B. So, with due respect to those who have drafted the bill, I think perhaps that might be a better solution rather than putting it in the overall principles of the whole Act. Nevertheless, clause 3 (1), I think, refers to all those sorts of things that are picked up by the ICCPR. The Siracusa principles refer to general issues about balancing various human rights so I do not see any problem with that being in clause 3 (1). But, I think, to some extent, there would be an argument to put the reference to article 18 in part 2B rather than in the opening provisions that cover the whole legislation. That would be my initial view. I can come back to the Committee if I have any other views in due course.

Bishop STEAD: Can I add to that answer? We similarly made a comment in our submission in paragraph 53, recognising that it is a little bit lopsided in the application of the bill and we would support the inclusion of the wider range of international human rights treaties, which we listed there. In respect to my learned colleague, if that were done, then I think it would still be appropriate to leave what is currently clause 3 where it is because, particularly in relation to the Siracusa principles, which are about the appropriate balancing of rights, if that were only limited to operation of new part 2B, it would perhaps be unduly restrictive, depending on which right you are balancing with and against. Putting them at the head of the Act makes it clear that this is the general balancing principle when it comes to the intersection of any two sets of rights, one of which would be religious belief.

The Hon. MARK LATHAM: If I can just go to a point that was raised substantially yesterday and a bit today about intersectionality. One of the features of our 2½ days of hearings so far, is that there has been no mention of the benefits of the bill for people of Indigenous spiritual belief. I know your churches would have a number of people who intersect from their Anglican faith and their belief in Indigenous spirituality. I was wondering if you could reflect on the benefits for them because, obviously, the bill makes the very important point that if an Indigenous person is told by a prospective employer that at that workplace they do not employ people who believe in the Dreamtime, then obviously they would be discriminated against. In the court, in the ambit of the bill, it gives them rights that they currently do not have. Bishop Stead?

Bishop STEAD: Yes, that is true of the whole range of protected beliefs and it includes minority beliefs within religious systems. So, for example, an LGBTI Christian is probably a minority belief within the wider Christian tradition but that belief is also protected in the same way that majority Christian beliefs are protected. Indigenous spirituality is protected as Muslim beliefs are. The beauty of the bill is that it protects all religion, people of all faith and no faith and everything in between, and all the possible permutations and combinations of protected beliefs.

The Hon. MARK LATHAM: Archbishop Davies, did you want to add to that?

Archbishop DAVIES: Just on that with regard to a number of our schools, St Andrew's Cathedral School, for example, has Gawura, which is an Indigenous school—not many Torres Strait Islanders, mostly Aboriginal—and they have been going for about 10 or 12 years now. We have incorporated smoking ceremonies, for example. That is appropriate and compatible with the ethos of the school as a whole. Barker College on the North Shore has the same system with another school in Bishop Stuart's territory in Newcastle diocese. We are trying to work as collegially as possible with First Nation people.

The Hon. MARK LATHAM: Yes, well, according to Bruce Pascoe, the Indigenous built those schools so it is a very good thing that you are doing those ceremonies. I thank you.

Archbishop DAVIES: Indeed, thank you.

Mr JIHAD DIB: I have a question for Bishop Stead. In your report there is a recommendation around the area of blasphemy and some proposals. I was wondering if you could elucidate a little bit about that and also if you could maybe provide some examples of what you would see as blasphemy as opposed to, say, criticism?

Bishop STEAD: We are picking up the recommendation of the Ruddock report that there should be a complete repeal of blasphemy laws. We do not think that it is appropriate in this world to have blasphemy laws because inevitably they lead to the prioritisation of one system of belief over another. The mere expression of a fundamentally held belief ought never be something that is restricted by a sacrilege or blasphemy law. To the extent that there are any remaining laws on the books that do that, they ought to be repealed.

Mr JIHAD DIB: And I think the second part that I was more interested in, and we have had this chat offline sometime, around what would constitute blasphemy? We had earlier an example—

Ms TANIA MIHAILUK: I can let you know.

The Hon. GREG DONNELLY: Be careful.

Archbishop DAVIES: Did someone blaspheme in this Committee?

Mr JIHAD DIB: We heard earlier an example from Archbishop Fisher about an example of some artwork that was considered blasphemous.

Ms TANIA MIHAILUK: Oh yes.

Mr JIHAD DIB: That is what I mean. Are we talking that sort of thing or are we talking about what somebody could consider a fair criticism of religion? It could be a discussion for another time.

Ms TANIA MIHAILUK: Mr Dib, maybe you could explain the artwork you are referring to.

Mr JIHAD DIB: So this is the artwork—and excuse my language—it was called *Piss Christ* about like a crucifix—

Archbishop DAVIES: I have read about it.

Mr JIHAD DIB: Which is obviously quite unbelievably offensive—

Bishop STEAD: Sure.

Mr JIHAD DIB: —to people of any faith. I think people of no faith would find that offensive.

Archbishop DAVIES: And cartoons of Mohammad in Europe which have caused the latest uproar of course as you know. That is a very delicate—particularly as that item you referred to, it was exhibited in Melbourne, as I recall, as an artistic endeavour, not so much a religious statement but an artistic endeavour on religion. That is a balancing act with regard to how you manage that in the same way that you might have artistry which might look like pornography in terms of photographs of young girls at age of puberty and things like that. So you need to balance those things. I do not think this particular bill is going to solve all those problems.

Mr JIHAD DIB: No. I was just interested in the blasphemy bit.

Archbishop DAVIES: But they are certainly issues that require ongoing freedom of expression. We want to commend that and approve that but at the same time recognising how you deal graciously with people in society of different views ought to be part of our ethos as all citizens, not just people of faith.

Mr JIHAD DIB: I think that is probably the best way to encapsulate it. There is a balance between freedom of expression and really using that to make offence toward somebody else.

Bishop STEAD: But to push that a little bit further, the blasphemy laws at their heart are actually laws against offence, it is offending a particular religious sensibility. Our general position is that there is not a human right not to be offended and the more that we try and create laws—

The Hon. GREG DONNELLY: The Greens do not believe that.

Bishop STEAD: —that protect people from offence—

Ms TANIA MIHAILUK: They have gone.

The Hon. MARK LATHAM: They have been offended.

Bishop STEAD: —the more we are empowering people to confect offence when they want to shut down other kinds of speech. So it is far better for me to realise that things are going to happen that will be personally offensive but that is the consequence of living in a pluralist society.

Mr JIHAD DIB: Thanks, Bishop.

The CHAIR: If there are no further questions, I thank the panellists today.

The Hon. GREG DONNELLY: Hear, hear!

The CHAIR: Thank you for your very considered submissions, which are very helpful to the Committee in drafting the report. We still have testimony this afternoon. Thank you for your patience, your time and your consideration of all the questions of members. There were questions taken on notice so the Committee Secretariat will confirm what those questions are at the same time as you receive a corrected Hansard transcript. You should not feel compelled to answer the questions but it would be helpful if you did because they have been asked for a reason. But I understand there may be other pressing considerations.

Archbishop DAVIES: If I may just express our thanks to the Committee. This is a great labour that you do and it is for the good of New South Wales. I appreciate the seriousness with which you are engaging with this bill, the questions you have given to us which have been intelligent and with integrity. We trust that our answers will assist you in writing your report and we wish you the very best.

The CHAIR: Thank you very much.

(The witnesses withdrew.)

(Luncheon adjournment)

JOHN McCLEAN, Convener, Gospel, Society and Culture Committee, Presbyterian Church of Australia in New South Wales, sworn and examined

SHERYL SARKOEZY, Researcher, Gospel, Society and Culture Committee, Presbyterian Church of Australia in New South Wales, sworn and examined

STEVE BARTLETT, Director of Ministries, Baptist Association of NSW & ACT, sworn and examined

The CHAIR: Thank you for joining us this afternoon. We will open with questions and the first person to ask a question will be the Hon. Greg Donnelly.

The Hon. GREG DONNELLY: Thank you all for coming along this afternoon. Your submissions have been received and have been very helpful. My questions will arise from commentary in the submissions. For ease of answers, I note we have two representatives from the Presbyterian and one from the Baptists, so perhaps the denomination can decide how you wish to share questions between yourselves, whoever is most comfortable or whoever you decide.

My first question is one that has been reflected on by a number of faith groups as they have come through the different denominations, the different churches, about the notion of what religion means to their flock, to their particular tradition. It has been expressed generally in these terms, that religion is in the context of the observance of going along to a church or a temple or a synagogue, or whatever, and expressing one's religious faith through their attendance and participation in sacraments and related matters within the four walls of the building. But that is only part of it.

One then has to look at what is the expression or the manifestation—that is the word that is being used—of their faith as a believer and that that is done in association with other people of their faith and perhaps people of other faiths or no faith. But it is activities and actions outside the church itself. The manifestation is very important. One has to see both working together to be a description of what it means to be a person of faith and believing. That is what religion effectively means, not just here in Australia but generally speaking. I am wondering if you would like to comment on whether, from your respective denominations, that is an accurate reflection as well—that with respect to religion it is more than just inside what goes on in the four walls of the building.

Reverend Dr BARTLETT: Yes. Thanks for the question. I would strongly affirm it. In fact, I would probably go as far as to say what happens inside the four walls of the building at a particular time at a particular day is not the majority of what it means to practice religion because the values and the principles of it come across all parts of life and affect decision-making and activities in all spheres, whether it is work, home life, recreation or whatever it might be. I guess there is probably the desire for there to be an integrity between what one talks about in terms of one's faith and how one practices that faith.

Reverend Dr McCLEAN: Yes. Very similarly, Presbyterians are standing in what is often called the reform tradition. It very much is about being engaged in the world as an expression of your faith. Nicholas Wolterstorff, a well-known philosopher of religion in the US, talks about the reform tradition being a world-forming faith. It is really a denial of the religious convictions of someone in our religious tradition to not be engaged beyond the four walls in their Christian identity. Again, just speaking from our own tradition—of course others have done similar things, but starting schools and universities and running hospitals and those sorts of things has been a big part of the reform tradition and Presbyterianism over the years.

The Hon. GREG DONNELLY: And continues to be an important part of, as you said, the mission of the church here and in the world.

Reverend Dr McCLEAN: Yes.

Ms SARKOEZY: I would add that, as well as organisationally, individually to take your faith from inside the four walls—to move from Sunday to Monday and the rest of the week—is the fullest expression of living as a Christian.

The Hon. GREG DONNELLY: With respect to the current New South Wales Anti-Discrimination Act, can I ask whether you are familiar with its provisions and what pertains within it in terms of certain exemption provisions for faith-based organisations? Are you aware of that provision?

Reverend Dr McCLEAN: Yes, I would say for myself in broad terms. I am not a lawyer.

The Hon. GREG DONNELLY: You are aware of those.

Reverend Dr McCLEAN: In general terms, yes.

The Hon. GREG DONNELLY: In the context of—specifically, there is a provision in there that provides the right for faith-based institutions to, with respect to their schools, control the employment of those who work in their schools and who attend the schools. It is called an exemption in the legislation. There have been some people advocating that those exemptions that currently exist are past their use-by date and no longer have particular relevance these days and ought to be seen as something which is no longer necessary. Do you have a view about the importance of those exemptions insofar as they enable your respective faith traditions to continue to teach their doctrines, tenants and beliefs in their schools?

Reverend Dr McCLEAN: I note that is not really in the purview of these amendments.

The Hon. GREG DONNELLY: No, but it kind of relates to a part of the amendment.

Reverend Dr McCLEAN: They are important for our schools to prosecute their religious mission and maintain their religious ethos. Obviously the staffing of schools is absolutely crucial. I teach in a tertiary theological institution. We always say that it is the staff who are the most important component of what we are trying to do. To have people who hold to a Christian faith and to understand the expression of it and who live that out consistently is fundamental to having that Christian ethos to a school. To have the ability to be able to maintain that ethos is really key.

Reverend Dr BARTLETT: Yes, sure. I think, in the absence of the bill that is being considered at the moment, the current provisions are—I would affirm what John has said in terms of the crucial nature of those and in terms of just continuing to enable the ethos and mission of those organisations. I think probably one of the things that I would note is that part of the issue currently is that they are there as exemptions. There is a question of whether that is really the best way for them to be expressed.

The Hon. GREG DONNELLY: It is like in the negative, isn't it? You are being exempted.

Reverend Dr BARTLETT: Yes, that is right. I guess, for us, we see those other protected attributes. We agree with those that are there already in the ADA. We think a much more helpful way is the one that has been proposed in terms of a positive declaration of that.

The Hon. GREG DONNELLY: Yes. Thank you.

Mr ALEX GREENWICH: My questions are about section 22M. Yesterday we had heard—and it is in the submission of the National Imams Council—concerns around 22M and the potential ability that it may create to allow a religious ethos organisation to discriminate against someone based on their religion. The Presbyterian submission uses the example that it may be appropriate for a Muslim church not to rent to a Presbyterian church and vice versa. Do you see that that section should be reviewed at all? The tension here of religion to religion, keeping things harmonious, and how that interaction plays—any feedback you might have on that section?

Ms SARKOEZY: I think one of the interesting things that was said this morning is that we know of Muslim students who attend Anglican schools. We know of non-Christian students who attend religious schools and that there is a way of working together to accommodate that. I think the point was well made this morning that we know that this is already happening, that Muslim students are able to—they are not turned away—attend Christian schools and receive the education that is being offered there. I also know that there are families, having spoken to some of the executives of our church schools—that there is a diversity in the school community that reflects the diversity in our wider community and that schools do not turn away others.

You are right that there is a tension there, but the way that we phrased it in our submission is that it is about expectations. Would it be appropriate for a church to demand that they rent the hall at the local Islamic school or would it be conversely reasonable for an Islamic mosque to say, "We want to meet in this church hall"? As we said in the submission, we would be saying that there is a balancing act there and it is about what is reasonable. We would not be preferencing one over the other. We would not advocate that.

Mr ALEX GREENWICH: Anything further?

Reverend Dr BARTLETT: I would affirm the importance of not preferencing. I think that is critical. There is also a sense in which section 22M perhaps needs to be seen as some sort of overarching provision and then there are a number of sections that follow. The Freedom for Faith submission raised the question of how these things interact and I think there may be aspects of that which might need a little bit more tweaking. But nevertheless, I think the question around preferencing and that sort of stuff also comes back to—this is certainly not a prohibition. I think that there should be the freedom for that to occur if, within the mission and ethos of an organisation, being open-handed in that way is appropriate. But there may be certain circumstances where it may not be appropriate to the religious convictions of an organisation of that nature. I think that it provides the flexibility without giving a sense that this is allowing preferential treatment in a way that is unhelpful or not in accordance with the doctrines of love and grace, which are key to religious faiths.

Mr ALEX GREENWICH: Feel free to take this on notice in the limited time. Mr Latham's bill obviously talks about protection for religious belief. Other parts of the Anti-Discrimination Act talk about protecting religious belief as a positive attribute. When it comes to private education authorities there are targeted carve-outs that allow discrimination directly against homosexual or transgender people, quite separate to the religious protections. Would it be your position that you support the more positive protection around religious belief and religious practice rather than those targeted attributes that private education authorities are then allowed to further discriminate against?

Reverend Dr McCLEAN: Can I just clarify? My understanding is that in the current Act, religious institutions have exemptions from all discrimination against any protected attribute. It is a general exemption. As a non-lawyer and non-legislator, it is always difficult to know how these things play out in practice. On the ground, what we and the members of our churches and the organisations that our churches help to run are concerned about is the ability to maintain a genuine religious ethos and to achieve the mission. At present the exemptions seem to operate successfully that way, from our point of view, but I can see the attraction of stating positively that we are allowing religious institutions to act in consistency with their ethos and their mission. If it had the same sort of effect, I think we would support that.

Reverend Dr BARTLETT: I think it is also part of the wider package of not only protecting that within the religious schools environment but a whole lot of organisations that might have religious ethos—and also protecting people in other organisations who themselves have a personal religious belief. That is what this bill does. If once that is enacted it is clear that the current exemption provisions are redundant, then let us remove them.

The Hon. MARK LATHAM: Thank you to the witnesses today for your time, for the submissions that have been lodged and for the work with Freedom for Faith. That is very much appreciated. Can I raise to Ms Sarkoezy a point about the core purpose of the bill? It is something that I mentioned before lunch, and that is that the oldest form of spirituality or religious belief in Australia is obviously Indigenous. It is a pretty glaring gap in our scheduling of witnesses that we will not have an Indigenous spokesperson here. I do not know if we can correct that on our fourth and last day. But what work has the church done in western Sydney in particular for people of that dual faith—Presbyterian churchgoers and Indigenous spirituality? What is the importance of this bill to that group?

Ms SARKOEZY: The Presbyterian Church of Australia has a mission arm. I have two hats with the Presbyterian Church: working for this Committee and also with the Australian Presbyterian World Mission. Among our missionaries is a man and his wife who are pastoring a congregation in partnership with the Anglicans at a church in Mount Druitt. Our ministry amongst Aboriginal and Torres Strait Islander Australians extends further than that. It is around the country as well, so that matters to us. Finding ways of working together with Aboriginal Christians is important—for them to be able to express their growing Christian faith and how that intersects with their historical spiritual beliefs. It is not clearly articulated in this bill, but we often think about religious freedom when we are talking about Islam or Christianity. But your point is well made that it also takes into account the religious beliefs of our First Nations people. That is of value to us.

The Hon. MARK LATHAM: Thank you very much. I come to Reverend Bartlett and the Baptist Association submission. The point that you make at letter c) about the rise of social media challenging people of faith to align their religious beliefs in their personal lives with the views or dictates of their employer is a new issue, isn't it? One of the purposes of legislation is to adapt to a changing society. I was there in the tail end of the Keating Government when we freed up some of the labour laws in Australia. It was not with the expectation of an unintended consequence that more individual contracts would lead to attempts to tie those contractual arrangements to restrictions on the beliefs and activities of workers outside of work time. This is a point that the labour lawyer Josh Bornstein has made. He labels them as everyone becoming a 24/7 brand ambassador for their company on Instagram and Facebook, and on it goes. That is a new development, as well as just the rise of social media having that function in society. How do the churches respond to this? How do they look at the protections set out in clause 22N (3) as moving with the times as a parliamentary amendment that adapts to these changed circumstances, which in many cases none of us would have expected?

Reverend Dr BARTLETT: You are right that times have changed and certainly social media is one aspect that shows that up, but I guess the reality is that we see it in other aspects as well. We see it in business leaders who have been forced to come off boards of particular organisations because of the Christian ethos of that organisation being seen to be incompatible with their main employment—those sorts of things. That is not even because of any particular public comment. It is just because of being a member of that board. At that level, we are saying that there does need to be some recognition that people can faithfully serve an employer in their role and have private views that they should be able to articulate. That freedom is even necessary in terms of the

commitments that we have made internationally. So yes, the mediums have changed and have got faster and sometimes less humane but the issue is a fundamental issue of freedom.

The Hon. MARK LATHAM: Do you get feedback from your congregation that people are worried about what they can say—even reasonable things that might be said on social media—just for that lurking fear of backlash and consequences? I know through my office we get a lot of this feedback from people who feel like they are under pressure to be someone other than who they would really like to be in the workplace and beyond.

Reverend Dr BARTLETT: Yes, sure. I would describe it as a general sense of vulnerability and that has increasingly become apparent. I think of people within our movement who work for businesses that they love and yet, in recent years, there have been occasions where there has been high pressure to take a particular action or wear something, or whatever it might be, that is against their convictions. They then find that really difficult to deal with—to stay true to who they are and to stay true to serving their employer in the way they would like to.

Ms JENNY LEONG: Thank you. I will just continue on that if I may for a second, Dr Bartlett. Do you accept also that there might be people of the lesbian, gay, transgender and bisexual community that also feel that they have associations with religious organisations and feel pressure to have to hide who they are and not express their views publicly because of fears around retaliation from the religious organisations as well?

Reverend Dr BARTLETT: Yes. Well, certainly wherever and if ever that was the case, it is something that we as a movement would not support. In fact some of the really key work that we have done in recent years is around providing safe environments for people in our churches. A key part of that is that churches are open and to be engaged with by people of all walks of life. That is really important for us and will continue to be important for us. Now, if there are situations where people of different backgrounds are being treated without respect, then we as a movement would not see that is consistent with what we stand for.

Ms JENNY LEONG: Thank you. I appreciate it. Just a quick one to Ms Sarkoezy, if I can—have Aboriginal people been consulted or have Aboriginal leaders been consulted in your submission around that? Are you here also representing an Aboriginal organisation?

Ms SARKOEZY: No.

Ms JENNY LEONG: Thank you. I just wanted to clarify. Dr McClean, if I may, just in relation to the need for the Act to provide consistency with religious ethos organisations and missions, how do you feel about that when there is a situation where people of faith who also might be lesbian, gay, bisexual or transgender would be at risk of the religious organisation potentially acting in a way that would prevent them from engaging with and being able to exercise their faith because of the beliefs of the religious ethos organisation in the context of this? I am happy for all of you to answer this because I think it is a point of tension and an unfortunate reality that it has been set up somehow that there are not a whole lot of people that actually are people of faith that actually also feel persecuted or under attack by the leaders of their own faith. I wonder if you could talk about the challenges that gives, because this bill would give protection to religious ethos organisations, as opposed to what we see in the other areas, which is protection to individuals to not be discriminated against.

Ms SARKOEZY: There is a tension. For every story that we might have to talk about someone who has experienced disadvantage or experienced a struggle, we can probably also find a story that tells the opposite picture. My conversations with the leaders of our church schools tell me that—out of those conversations I know that we have students in our schools who are children of same-sex couples. Some of those same-sex couples specifically choose to send their children to the church school because they want them to have a Christian education. Those families are welcomed and the school leaders have told me that they participate fully. They understand what the ethos of the school is.

So, the families know that there will be chapel and there is an expectation that students attend chapel, and the students do that. The school is not looking for changed hearts, necessarily, but they are looking for people who will live within the ethos of the school. This actually already happens. The point that I would make is that there are stories that we hear about people who have experienced struggles. Some of those stories came out in the sex discrimination amendment hearings with the Senate. There are those stories that come out, but there are also stories that tell a different picture. There is diversity in our church in the student body of our church schools and amongst the parents in our church schools. They are communities that work well together and love one another.

Ms JENNY LEONG: Absolutely. Can I just follow up on that? Obviously there are currently exemptions in the Anti-Discrimination Act. There are concerns from some people who have appeared before us around the fact that this bill would seek to put a hierarchy on religious freedoms over other areas that are protected attributes in the Act; namely, the inclusion of article 18 (3) of the ICCPR at the top of the bill, as opposed to in the section relating to religious freedoms. Is it your view that religious freedoms should be put as a higher level

of protection to the other attributes that are protected in the Anti-Discrimination Act, or that it should be protected to the same level as the other attributes?

Ms SARKOEZY: That was a long question.

Reverend Dr McCLEAN: Again, not being a lawyer and not quite necessarily understanding how this is all interacting, I am not convinced that it is a matter of elevating one set of protected attributes in general over the other. I think the area that you are particularly asking about is the protection of the ability of an organisation with a religious ethos to maintain its ethos and prosecute its mission. That is a fairly narrow set of activities for a fairly small group of institutions. It is not proposing that carte blanche, across all society and in all activities of all organisations, religious belief would be protected above any other protected attributes.

Ms JENNY LEONG: I appreciate that my time is up, but I might follow up with supplementary questions or if we get time at the end. I think there is a difference there that I think would be good to draw out from your position versus some of the others we have heard from.

Reverend Dr McCLEAN: Sure.

Dr JOE McGIRR: Good afternoon and thank you to the witnesses for their submissions, for appearing today and for their commentary so far. I have a question to the Reverend Dr McClean and Ms Sarkoezy in relation to the submission from the Presbyterian Church of Australia in the State of New South Wales. In your submission, in section 2.2 you refer to an issue of Christian congregations possibly being denied the opportunity to rent New South Wales public school facilities and in other circumstances feeling restrained when using community facilities—I presume these are government facilities—from teaching the *Bible*. I am just wondering if you could expand on that, please?

Ms SARKOEZY: I think it has been said here about a general feeling of unease, not amongst all Christians but among some Christians, about how they live out their Christian life in the public sphere. I know that is also reflected amongst the experience of our pastoral leadership in the Presbyterian Church in New South Wales. There are congregations who say that they are much more—they are concerned about scrutiny of how they do their ministry when they are renting school halls. Lots of our newer congregations are doing just that because they are moving out into new areas. There may not be church buildings, so they are renting community halls or school halls. The possibility of scrutiny from a State body or a community body is something that our pastoral leadership are generally concerned about. We do hear stories about university groups who take some of their teaching off campus into private facilities because they are concerned about scrutiny and the potential for not being able to continue their ministries. That is the sort of thing that we are referring to there.

Dr JOE McGIRR: It sounds like in the feedback you are getting there is a genuine anxiety and concern around those issues.

Ms SARKOEZY: Yes, and some of that comes from watching other jurisdictions and seeing the trajectory in other jurisdictions in Australia. Christians are talking to each other all the time. Pastoral leaders are talking to each other all the time. Sometimes leaders the New South Wales look at what is happening in other States and are concerned about the possibility that they might be under the same restrictions or scrutiny that there is in other jurisdictions.

Dr JOE McGIRR: This raises a point that I am interested in your views on. Section 22Z is an attempt to clarify the situation of discrimination by the State, which clearly should not be allowed to discriminate any more than anyone else is allowed to discriminate. I am actually not sure from what you have said whether this is covered in that section.

Reverend Dr McCLEAN: Are you happy for me to make a comment on that?

Dr JOE McGIRR: Yes, by all means.

Reverend Dr McCLEAN: We happened to be chatting about this over lunch and it did seem to us that 22Z would apply if, for instance, a State school said, "We are not going to rent our hall to you because you are a church, and because you are a church that holds this particular belief." That would seem to be the provision of—well, perhaps it is not quite a straight program.

Ms SARKOEZY: Goods and services.

Reverend Dr McCLEAN: That is right. I remember the discussion now. Thanks, Ms Sarkoezy. We were actually saying that under section 22W—the idea more generally of the provision of goods and services—if a school is renting out its properties, then it is providing a service to the community and section 22W would not allow any provider of services to discriminate on the basis of religious beliefs or activities.

The Hon. MARK LATHAM: But it is the intent of section 22Z to do the same?

Reverend Dr McCLEAN: Right.

Dr JOE McGIRR: Yes. Maybe I need to reflect on this myself, but I accept that section 22W provides protection in that respect, and section 22Z refers specifically to the performance of a function under State law. The examples you give of using a school facility or a school hall, I am not sure it quite finishes there. That might be something we need to think about clarifying. Thank you for raising that point.

Ms SARKOEZY: Our pleasure.

The CHAIR: Did witnesses want to make any further comments?

Reverend Dr McCLEAN: No.

Ms TANIA MIHAILUK: Thank you for attending today. I wanted to ask some generic questions on the back of Ms Sarkoezy, who mentioned the concept that Christians are Christian from Sunday to Monday.

Ms SARKOEZY: Sunday to Monday.

Ms TANIA MIHAILUK: All week, and not just on Sunday morning. My question is to all of you. Have you, your organisations or any of your parishioners experienced any direct discrimination as a Christian? Are there any examples that you can think of where Christians have experienced discrimination, whether it be through employment or discrimination that you think the bill could in some ways address?

Ms SARKOEZY: Earlier this year I had a phone call from one of our Ministers in a rural area who had a parishioner come to him with a concern that he was being asked—he worked for a local council—to sign a document that he struggled with because of some of the things that were included in that document. This man felt that he was not sure that that was consistent with an expression of his Christian faith. He was able to resolve that. Sometimes those things come up. Some of the young people in our churches express their experience that sometimes their Christian life may not be consistent with what their employer expects or with what their co-workers might expect. This is all anecdotal.

I am not sure that there are any statistics anywhere on this experience, but our congregation members do express those sorts of concerns about the way they engage in the workplace and about the way they engage with their employer, about what they are required to wear or about what their employer might expect them to say or do about different issues that come up in our society. It is there. I personally do not know of anyone who has lost their job over it, but people feel concerned that they cannot speak freely about what they do on the weekend or about how their Christian faith informs the way they work, the way they raise their families or the way they engage with art, sport and all sorts of other pursuits that we would want to encourage in a healthy society.

Reverend Dr BARTLETT: Yes. I would affirm Ms Sarkoezy's comments and I would say that there are some high-profile examples of this that we could quote and that have been documented. But, anecdotally, yes, it comes back to this sense of, "Will I be able to be who I really am in my workplace or in another environment, and will that be respected and will I have my progression in that environment stymied if I am too open about who I am?" You do not see it so much in terms of people losing their jobs, but it is more that people choose, "I can no longer work in this environment because it is contrary to my values." Of course, that is true for anyone and whatever values we might hold, but the purpose of this Act in its entirety is to seek to minimise those situations, so it is a real issue. The other thing I would say is that that does not mean that people of faith do not want to talk about their faith or feel as though they do not want to engage with their faith. They really just want to be taken for who they are, as we seek to do for others as well. It is really in that context that the pressure can sometimes come.

Reverend Dr McCLEAN: Can I just pick up on that a little bit further? Reverend Dr Bartlett said a few minutes ago that there is a sense of vulnerability that people have. It seems to me that these amendments can perhaps address that as much as any particular case, especially where there are debates about ethics, public ethics and Christians who have a distinctive view that they want to express. That may not be particularly related to the organisation that they work for, but it is part of the discussion either in the workplace or generally. We talked about social media and those kinds of modes, but at present they feel unfairly restrained. They think, "Well, if I said something and the management of the business felt that that was inappropriate and wanted to take me to task for it, I do not really have anything to stand on." Whereas, if these provisions were in, there would be something to stand on. Hopefully it would never come to that, but it gives a basis.

Ms TANIA MIHAILUK: A comfort.

Reverend Dr McCLEAN: People with other protected attributes at present do enjoy that confidence to think, "Oh well, if someone really wanted to take me to task for my ethnicity or my sexuality, there is a legislative protection from that discrimination." Religious people do not at present feel that way about their religion.

Ms TANIA MIHAILUK: That is a very good point that you have just made.

Ms ROBYN PRESTON: Thank you very much for joining us this afternoon on day three of our public hearing. I want to draw your attention to paragraph 2.5. You support the amendment in section 22S to protect individuals from being discriminated against by their authorising or qualifying body in relation to that. For example, you say that this section would protect Christian doctors who act in accordance with their religious beliefs as they practise medicine, including those who decline to refer a woman to another practitioner in order to obtain an abortion because of their beliefs about the unborn. I am just picking up on those words and noting Mr Latham's comments that the amendments do not interfere with the abortion Act that has been passed. Are those comments in keeping with that as well?

The Hon. MARK LATHAM: Yes, section 54, is it not?

Ms ROBYN PRESTON: So section 22S is what the witnesses—

The Hon. MARK LATHAM: Yes, section 54.

Ms ROBYN PRESTON: Reverend Dr McClean, would you like to expand on those comments, please?

Reverend Dr McCLEAN: Are you asking us to expand here or to talk about how it interacts with the abortion Act?

Ms ROBYN PRESTON: Expand based on your comments in the submission please.

Reverend Dr McCLEAN: Our understanding of the implication of section 22S is that it means that where someone holds ethical convictions on the basis of their religious beliefs they are being given some protection. They cannot be failed to be given a qualification because of those ethical beliefs, especially where the belief itself and the activity that they do want to conduct or do not want to participate in does not touch directly on the exercise of the profession they are being qualified for.

Ms ROBYN PRESTON: So, this is more of a protection for their beliefs matching also their qualifications?

Reverend Dr McCLEAN: Right, so if you are going to be a general practitioner—if we are going to talk about doctors to take that example—who is not going to be practising an abortion, it is not that you are being asked whether you would conduct a procedure for which you have been qualified and which was in your normal scope of practice but you have an ethical conviction about that. You are not to be discriminated against because of that ethical conviction.

Ms ROBYN PRESTON: And you also include the values that the practitioner has on euthanasia as well and where they stand on that.

Ms SARKOEZY: Yes.

Reverend Dr McCLEAN: That would be another example of that kind of area.

Ms ROBYN PRESTON: Did anyone else want to comment?

Reverend Dr BARTLETT: Yes, I would. I think for example of the case of Dr Patricia Weerakoon who is a mental health practitioner, published author and whose comments in an educative framework were taken out of context. She was taken to task and subsequently cleared but in the end had great difficulty in terms of her ongoing accreditation because of that journey. And really, there was no need for that and no reason that should have occurred. That would be one example of this sort of scenario.

Ms ROBYN PRESTON: This is more of a safeguard in relation to issues like that?

Reverend Dr BARTLETT: That is right.

Ms SARKOEZY: I think in some ways we are thinking ahead of what might happen with legislation, particularly in the area for abortion and for euthanasia that a Christian medical practitioner may well not want to participate or refer someone there. This section of the Act does, we think, offer some protection for Christian practitioners that in many cases does not exist in other jurisdictions. If we look at other jurisdictions in Australia, medical practitioners are restrained in some ways and some feel that they might be at risk of losing their accreditation because they are not willing to toe the line of the legislation or of their accrediting body. This would offer protections.

Mr JIHAD DIB: Thank you for your submission and for being here. Here is a question for the Reverend Dr McClean and Ms Sarkoezy in relation to your submission around section 22N on page 6. There has been a fair bit of discussion and you highlight a few key areas. We know that private expression outside of work has been

quite a complex issue and there has also been suggestions about the possibility of carve-outs within work agreements and so forth so that there is an agreed set of what is acceptable and what is not. In your submission you talk about a suggestion that there is more clarification on what constitutes attack or criticisms. Do you have any particular thing that you want us to consider or is it more a suggestion for us to do?

Ms SARKOEZY: What we are thinking about there is that the idea of saying that comments made by somebody outside of their employment contract is actually explained quite well in the bill but we are concerned it does not constitute direct and financial impact. We are wondering what happens when an employer says that your criticism—it is a hypothetical. There has been a lot of conversation about hypotheticals.

Mr JIHAD DIB: Yes, all hypotheticals.

Ms SARKOEZY: All hypotheticals. Hypothetically somebody posts on social media what their views of euthanasia might be. They might be in a small business and their employer might have a different view. The local community knows that they work together and then thinks, "Well, actually, if this person has these views on euthanasia I am not going to shop in that place". The employee has not actually directly criticised his employer. He or she has just made a view. We are wondering: Where is the line and who will test that line? We say in our submission that it will be the courts that test that line about what becomes just general comment and critique of a position. At what point does that shift into a critique and criticism of an employer in such a way that causes them detrimental impact that would allow them to then terminate that person's employment. That is going to be tested by the courts unless defined.

Mr JIHAD DIB: We are all on Twitter here and one of the things that I have really picked up on is the number of people that say, "My views are my views. They are not going to reflect the views of my employer."

Ms SARKOEZY: Yes.

Mr JIHAD DIB: That is a little bit of a protection there. I agree there is a bit of testing to take place and certainly with that a real sense of what constitutes criticism, what constitutes an attack, to whom it will be offensive and just how strong that attack will be. I think that is where the future might lie.

Ms SARKOEZY: That is right, and how do we measure intent?

Mr JIHAD DIB: That is right.

Ms SARKOEZY: Or what is the intent of the comment that is made on social media? Is it intended to hurt or is intended to inform or just tell someone what I think about what is happening in the world around us? That will surely be a matter for the courts to test.

Mr JIHAD DIB: And we see in the explanatory notes that Mr Latham has put together around the famous case.

Ms SARKOEZY: Yes, the famous case.

Mr JIHAD DIB: Where you say, "Well, this person is representing a view." People know that he is identified very strongly as a person of faith and of quite deep faith, but by the same token somebody else will take that as quite offensive. It is that balancing act and the challenge moving ahead is where we find all of that. Thank you for your submission. It is really detailed and I appreciated the thought behind it.

Ms SARKOEZY: Thank you.

The CHAIR: We move to open questioning session. Do any members have additional questions?

The Hon. SCOTT FARLOW: I might just pick up on Mr Dib's question. We have seen and you make the correct assumption that it will be something that is determined by the courts of the end of the day. We have seen largely that it does not come down to necessarily the legal regime but employers at the moment may be making the decision because it is in their best corporate interest or perceived best corporate interest. How much do you think this bill could actually go to providing a legal protection? Do you think it might be something that could potentially make employers, as was suggested earlier today, take a second look at whether they would take action or pressure somebody to leave a board, for instance, that they might be on that might be in conflict with, say, The Lachlan Macquarie Institute board as another famous case in this instance.

Reverend Dr BARTLETT: Just briefly, from our perspective it comes back to seeing this as a positive protected attribute rather than a set of exemptions. There is a change in the discourse that comes with that. As we have seen when the other protected attributes have been added to the Anti-Discrimination Act, that has assisted in bringing about change in the way we think about that particular protected attribute in a positive way. It has empowered people who have been in vulnerable positions to know that they can operate with a sense of safety

and that there is a framework around them that is recognised within the law. Yes, it will make a difference over time. Yes, it is about legal protection, but it is also about culture over time as well.

The CHAIR: I draw the testimony to a close. I thank all three witnesses for your generosity, your submissions, your patience with the Committee and the good spirit within which you answered the questions. There may be additional questions on notice that will be sent to you when you receive a corrected transcript. You should not feel obliged to answer them but the Committee would welcome feedback if you have it. On behalf of the Committee, I thank Reverend Dr John McClean, Ms Sheryl Sarkoezy and Reverend Dr Steve Bartlett.

(The witnesses withdrew.)

(Short adjournment)

LISA ANNESE, Chief Executive Officer, Diversity Council Australia, affirmed and examined

KARLA DUNBAR, Governance, Policy & Research Officer, Diversity Council Australia, affirmed and examined

The CHAIR: Good afternoon and welcome, ladies. Thank you for jumping straight into testimony; we are running a little ahead of schedule. I will introduce the members of the joint Committee. My name is Gabrielle Upton; I am the Chair of the Committee. To my left we have Mr Paul Lynch, who is the Deputy Chair and the member for Liverpool. The Hon. Catherine Cusack and Dr Joe McGirr, member for Wagga Wagga, are joining us via Webex, so they will hear everything you say. We have Mr Jihad Dib, member for Lakemba; the Hon. Greg Donnelly, member of the Legislative Council; the Hon. Scott Farlow, member of the Legislative Council; the Hon. Sam Faraway, member of the Legislative Council; Mr Alex Greenwich, member for Sydney; the Hon. Mark Latham, member of the Legislative Council; Ms Jenny Leong, member for Newtown; Ms Tanya Mihailuk, member for Bankstown; Ms Robyn Preston, member for Hawkesbury; and Mr Gurmeh Singh, member for Coffs Harbour.

I will address how we run the proceedings. Because of the number of Committee members, we will forgo opening statements and jump straight to questions. Each member is allocated roughly five minutes to address questions to you. At the end, we may have some free time when they can address a further question. You will hear a buzzer go off, which says we are at the four-minute mark. It is my job to help the proceedings run smoothly. You will not be guillotined at five minutes if you are speaking, but it is a good discipline to keep us moving through the proceedings. Do you have any questions about the way we will run the proceedings?

Ms ANNESE: No, no questions.

The Hon. SCOTT FARLOW: Thank you for joining us this afternoon. By way of background, the Diversity Council Australia is funded by the Business Council of Australia and the Australian Chamber of Commerce and Industry. Is that correct?

Ms ANNESE: It was initially established as a joint venture 30 years ago but, no, it is funded by its members.

The Hon. SCOTT FARLOW: Is it part of those organisations still, or does it have any association with them? Or is it independent and just funded by members?

Ms ANNESE: No, its constitution reveals the governance structure of members: almost 700 Australian organisations.

The Hon. SCOTT FARLOW: So it is a subscription service, effectively, to be part of the Diversity Council Australia?

Ms ANNESE: Yes.

The Hon. SCOTT FARLOW: With the Diversity Council Australia and the membership, if a corporation is to become a member of the Diversity Council Australia what does it sign up to?

Ms ANNESE: It depends on the size of the organisation. We have five membership tiers. A small organisation will pay \$1,600 a year plus GST, and a large organisation that has 10,000 employees or more will pay approximately \$10,500 plus GST.

The Hon. SCOTT FARLOW: In signing up, is there any requirement of members as to a certain employment practice, for instance, that they must incorporate into their employment structures as a corporation? Is there anything they sign up to?

Ms ANNESE: No, they just need to be a legal entity.

The Hon. SCOTT FARLOW: So there is no policy that they then apply as part of membership with the Diversity Council Australia?

Ms ANNESE: No.

The Hon. SCOTT FARLOW: It is just an advisory body in terms of how to have more diverse practices in employment?

Ms ANNESE: I do not know about advisory, but we produce evidence-based resources. We run events. We sometimes advocate on their behalf. The goal is that organisations who want to improve their skill level in this area engage with us to that end.

The Hon. SCOTT FARLOW: In terms of this bill, you have outlined that you are supportive of policies or changes that would allow for the recognition of no discrimination on the basis of religion or of no religion at all. Is that correct?

Ms ANNESE: That is correct, yes.

The Hon. SCOTT FARLOW: How would you see that taking place in the Anti-Discrimination Act in New South Wales?

Ms ANNESE: We believe that a piece of legislation—maybe positioned the same way as the Sex Discrimination Act or the race discrimination Act—which protects people's right to their religion and protects them from being discriminated against on the basis of having a religion is actually long overdue and required.

The Hon. SCOTT FARLOW: If I can put to you a circumstance, for instance, there has been a relatively high-profile case where there was an individual who was at, I think, PwC originally and then at IBM who was a member of the board of the Lachlan Macquarie Institute and was subsequently asked to resign that position on the board. Is that something that you think should be allowed to happen in corporate Australia, or not?

Ms ANNESE: I do not know anything about the case that you have just presented to me.

The Hon. SCOTT FARLOW: In terms of the views of the Diversity Council Australia, would you say that somebody should be—

Ms JENNY LEONG: Point of order: In other circumstances we have provided details of these matters so that the witnesses are able to consider them and take them on notice. I think it is important to make it clear that that option is available, if the Hon. Scott Farlow is willing to provide the information.

The Hon. SCOTT FARLOW: I am happy to put that on notice. Ms Annese, would you think it is important to be able to protect somebody's membership of an organisation outside of their workplace that may not have any involvement in the workplace—for instance, something like the Australian Christian Lobby or the Lachlan Macquarie Institute, as was mentioned, or any other organisation outside of their workplace that may not necessarily be a religious institution but may have a religious ethos?

Ms ANNESE: I think organisations are entitled to identify what values are important to them and have an expectation that behaviour in a workplace is consistent with those values.

The Hon. SCOTT FARLOW: My time is up.

The CHAIR: Mr Farraway?

The Hon. SAM FARRAWAY: I have nothing, if the Hon. Scott Farlow wants to keep going.

The Hon. SCOTT FARLOW: If an organisation—for instance, PwC or IBM—determined that membership of the Lachlan Macquarie Institute, for instance, that provided scholarships to young Christian leaders was inconsistent with their ethos, you would think that they could ask for somebody to either resign that position or resign their job or leave employment?

Ms ANNESE: In our submission, what we have made really clear is that what we are concerned with is what is the implication in a workplace context. We are very concerned, if we use an inclusion framework, that workplaces need to be places where people can productively be employed and where they can operate in a manner that is not discriminatory or where they are not being harassed or bullied. I think they are the principles and inclusion that I would want to see take place in every Australian workplace. I really do not know anything about this PwC case. I know you have tried to frame it in a broader sense, but I am still trying to understand what the actual issue is that you are putting to me.

The Hon. SCOTT FARLOW: I will put it as a theoretical position, but it was an actual example. There were two individuals who were members of the board of the Lachlan Macquarie Institute. After pressure from certain social media activists, those companies—being PwC and IBM—asked those members to resign their board positions because it was not seen as consistent with their practices as members of the Diversity Council Australia—there was another organisation as well at the time—because of the Christian ethos of the Lachlan Macquarie Institute and because of its position at the time when it came to, particularly, the same-sex marriage debate.

Ms ANNESE: In our membership base we have all sorts of organisations who are Diversity Council Australia [DCA] members, including religious organisations. I am not sure what the logic was behind that position and whether it was purely on the basis of their existing membership somewhere else. But what we would say is that as an organisation you are entitled to say these values are important to us and we would like them upheld.

Mr ALEX GREENWICH: Thank you both for coming in today and for the work you have done to make workplaces more inclusive places. Before politics I worked in human resources. That was almost from two decades ago to about a decade ago, and there has been a massive change during that time, a lot of that due to the work that your organisation has done, so thank you. When it comes to inclusive and supportive work spaces, whether it be in a multi-faith context or in an LGBTI context, or in a wider diversity context, you have identified that this bill has significant risks. Could you take us through what you see as those risks and concerns in the proposed bill from Mr Latham?

Ms ANNESE: Thanks for the question. We primarily see the problem, and I would like to say very clearly that we do support protection for people who have religious faith, they should be entitled to be employed and not be harassed and vilified. However, we feel that this bill does not strike the right balance and that it prefaces this particular part of someone's identity over other human rights. That is a problem in a workplace context. There is quite possibly an ethical problem with that. There is also a practical problem with that. If you are running an organisation and you have two separate individuals, who both feel that their human rights have been breached, how do you resolve that without spending a lot of time just with lawyers? But then how do you build a cohesive workplace culture?

We know that organisations are really important parts of our society, they are not just monolithic entities devoid of character or personality, they are really intrinsic parts of people's identity and people's ability to not just have economic prosperity but to feel as though they belong to something. It is important that in that workplace context that all people feel safe to be there. If you are privileging one human right over another, which creates an unsafe working environment for someone else, that is a problem for workplaces and it is a problem building cohesive workplaces. We know from our research that cohesive, inclusive workplaces are important for productivity, for employee engagement, for innovation, and they reduce risk in a workplace environment as well.

Mr ALEX GREENWICH: Potentially could you speak to those benefits for a workplace, of ensuring a harmonious and inclusive environment?

Ms ANNESE: The benefits are played out in manifold briefs. I am not just imagining this. I run a research organisation. I have evidence that this is true. Certainly I will point to one study that we do every two years, it is our Inclusion At Work Index. Organisations that rank high on inclusion, that is that they provide workplaces that are respectful, where people are connected, where work is meaningful and where people feel they add value and have opportunities, those kinds of workplaces are workplaces that are highly productive, where people are highly engaged, where there is a reduction in absenteeism, a reduction in presentism, and where there is a reduction in risk-taking behaviour. That is consistent across all industries. What we find is that when individuals are operating in those inclusive organisations they are more likely to want to give discretionary effort, they are more likely to want to go the extra mile for their employer, they are also more likely to be happy with their workplace and to want to stay employed by that employer. There are absolutely no negatives when it comes to creating an inclusive work environment.

Mr ALEX GREENWICH: To your first answer about the concerns in the bill, which potentially put people's different rights at odds with each other—feel free to take this on notice because I am sure you have plenty of research on this as well—could you talk about the work that Diversity Council Australia or your members do to actually foster harmonious work environments, whether it is multi-faith, LGBTI, et cetera?

Ms ANNESE: Organisations who are committed to the principles of diversity and inclusion, they firstly recognise that people are not clean slates when they show up at the workplace, that they have identities that might be invisible to other people, but that workplaces are just collections of human beings interacting with one another. Whatever your motivation is for wanting an inclusive workplace, and for some people the motivations are not altruistic, they are just about productivity, but that organisations who are committed to that recognise that individuals, especially in Australia, multicultural society, where we broadly respect principles around gender equality and LGBTIQ+ dignity and inclusion, that those things are always at play in a workplace environment and that you would do well to create a culture where people feel valued and they do not feel as though they either have to hide who they are, because it is an unsafe environment, or where they are at risk of vilification or bullying or exclusion.

The Hon. MARK LATHAM: Can I ask about the earlier statement about the creation of an unsafe workplace. Which part of this bill would make workplaces less safe?

Ms ANNESE: If we have a situation that prefaces one human right over another, it is possible that you could have an individual, for example, who might on the basis of their religious beliefs refuse to want to work with someone who has a transgender identity. For that transgender person that sense of exclusion is directly linked to all the sorts of things that I have just outlined in our inclusion index. So, it can become psychologically unsafe

for people to work in an environment where they are feeling isolated, where they feel there is hostility against them, or where they feel excluded.

The Hon. MARK LATHAM: So the religious person resigned and left the workplace, how has that made it less safe?

Ms ANNESE: Oh, sorry, I misunderstood. The religious person has—could you just rephrase the question?

The Hon. MARK LATHAM: Did you not just say that a religious person refuses to work with a transgender person, meaning that they have left the workplace. How has the safety level dropped?

Ms ANNESE: If an organisation was trying to put a team together for a project, say for example, and someone said, "I do not want any gay people on my team or a trans person on my team because I find that they are sinful people", and an employer abided by that, for those people who are excluded that is a harmful work environment for them.

The Hon. MARK LATHAM: Is that not covered under the Anti-Discrimination Act now? That is a form of transgender or sexual discrimination that is actionable. So where is the priority given to religion?

Ms ANNESE: Well, I think the problem in a situation like that is that an employer will end up in litigation. It is what I was saying earlier, there are moral reasons that we can outline, that there are problems with this bill. But there are practical reasons, and that is a practically impossible situation for any employer.

The Hon. MARK LATHAM: Well, I do not know. The Anti-Discrimination Act by its nature is litigation. Could I go to the Israel Folau case. How did Rugby Australia develop a more inclusive workplace culture by expelling a born-again Christian Islander?

Ms ANNESE: I am happy to take the Israel Folau case specifically on notice. We have not profiled it as a particular case study in our work. But I think that Rugby Australia as a principal has the right to say, "We have these values, and people who represent our organisation, we have an expectation that they also express those, or at least they do not openly contradict those kinds of values."

The Hon. MARK LATHAM: With the expulsion of Folau, as you take it on notice, can you look at the impact on the other born-again Christian Islanders who play rugby, and do it very well, and it is part of their cultural expression, how they felt to see one of their colleagues kicked out of the game because he paraphrased the *Bible* on social media?

Ms ANNESE: We can certainly take that on notice.

The Hon. MARK LATHAM: Do you support a company like Qantas imposing its sponsorship money on Rugby Australia to the point that it insisted on Folau's expulsion? Is that something that is inclusive and you excuse away as the legitimate activities of big capital?

Ms ANNESE: I think that Qantas, like any other organisation, is entitled in its commercial operations to make decisions and to engage in partnerships that are beneficial to its organisation and the culture that it wants to create.

The Hon. MARK LATHAM: And how is that culture inclusive if it expels people on the basis of their religion and part of that religion comes from a cultural background of being an islander?

Ms JENNY LEONG: Point of order—

The CHAIR: Ms Leong has raised a point of order, Mr Latham.

Ms JENNY LEONG: Mr Latham and his line of questioning is conflating things. I think it is important and would request that he rephrase the question. I do not think in relation to Qantas anyone was—

The Hon. GREG DONNELLY: That is a debating point.

The Hon. SCOTT FARLOW: That is an opinion not a point of order.

The CHAIR: I am listening to a point of order that has been raised.

The Hon. GREG DONNELLY: It is a debating point.

The CHAIR: Mr Donnelly, I will get to you in a moment.

Ms JENNY LEONG: There seems to be a conflation between the actions of Rugby Australia and Qantas in relation to Mr Latham's question and I was wondering if he could clarify when he was asking the question.

The Hon. MARK LATHAM: To the point of order: Twice now as a parliamentarian I have quoted from internal Rugby Australia documents showing they were acting under the direction of Qantas, the feeling that if they did not please Qantas in this circumstance, which subsequently dropped them like a bad habit, they would lose the sponsorship anyway. This is on the parliamentary record and perhaps the witness can consult that record along with the member for Newtown in answering the question on notice.

Ms JENNY LEONG: I think I have better things to do than read Mr Latham's contribution on *Hansard*, chair.

The CHAIR: No sidebars. Mr Latham, I am happy for you to proceed with the question.

The Hon. MARK LATHAM: If you do not read you will not learn, that is part of your problem.

The CHAIR: Order! I will have order from members. Mr Latham, please proceed. I am afraid the time was used up.

The Hon. GREG DONNELLY: I am prepared to vest some of my time to Mr Latham.

The CHAIR: Let me see whether you are next in line.

Ms JENNY LEONG: It is actually me, chair.

The Hon. GREG DONNELLY: This is a prospective vesting.

The CHAIR: Witnesses, I apologise, it has been a long day.

Ms JENNY LEONG: Thank you for attending and for your submissions. It was helpful to see it in a broader context. One of the areas you covered was the pressures that would be put on business and employers if this bill were to come into effect and to, in effect, act as arbiters around potentially acting unlawfully by allowing discrimination against some of their employees while at the same time acting to respect the religious beliefs, views or activities of another employee. Could you talk a little more about how you see that playing out and the risks to businesses as a result of having the responsibility for making decisions around this and complying with this Act in this way?

Ms ANNESE: I think that complying with this Act is problematic because you are prefacing one right over other rights. I think that it is important to say that we are the authors of a set of multi-faith guidelines. We believe workplaces absolutely need to be respectful of people's right to have a faith and to honour that faith. Where we draw the line is where the expression of that faith impinges upon someone else's right to operate and to be in a workplace safely. That is the line. It is quite clear. That is why we would prefer to see a bill which protected religion as an attribute without providing opportunity for positive discrimination against others with different identities.

In terms of how it plays out in the workplace, I mean workplaces, again, most Australian workplaces, certainly DCA member workplaces, are really trying to do the right thing by their employees. They want to create workplace cultures where people feel connected to one another, where things are cohesive and where they have a zero tolerance towards discrimination, harassment and vilification. Essentially, saying that if on religious grounds you discriminate or say deeply offensive things to someone, for example, whose identity is part of who they are then that is a situation that under any other circumstance we would not accept. That is how it would play out. An inclusive workplace I see would be a workplace where that same organisation would absolutely protect someone's right to have a religion and to be religious, providing the expression of their religion is not harmful to other people.

Ms JENNY LEONG: I notice in your submission you talk particularly about the challenges faced by people of non-Christian faiths and facing discrimination, and we are very aware of those realities in this very place and in this as a workplace with the party of the proponent of this bill having a policy to ban the burqa, ban full face coverings, no building of any more mosques or Islamic schools and a number of other concerning practices by their Federal One Nation senator. I wondered if you could comment, particularly, of the impact on people of non-Christian faiths in terms of the kind of commentary and approaches that we are seeing in the public domain and the impact that has on people in the workplaces and the need to protect their rights?

Ms ANNESE: It is a great question, because in our research what we have discovered is that people from the religious majority in Australia do not actually experience workplace exclusion in Australian workplaces. Where we saw exclusion being experienced on the basis of religion it only came from religious minority groups. I think that is really important to understand. Exclusion usually happens to minorities, it does not happen to majorities—not always. But, that is absolutely certainly true and part of the push towards creating more cohesion in our workplace is to recognise that not everyone comes from that majority perspective and not everyone is part of the dominant group that has traditionally imposed its blueprint for what is acceptable within our culture.

Dr JOE McGIRR: Thank you for your submission, attending and the work that you have done in workplaces, as Mr Greenwich indicated. My first question relates to page 12 of your submission, about halfway down the page, there is reference to the Fair Work Commission that has previously recognised that conduct that occurs outside of work, which is likely to cause serious damage to the relationship between employer and employee, damages the employer's interests can be the grounds for dismissal. It is my understanding, in fact, that this bill does not alter that. Could you comment on that?

Ms ANNESE: Well, only in so far as to say that we would agree with the Fair Work Commission that if behaviour that has a significant impact on the workplace it is of course of concern to that workplace.

Dr JOE McGIRR: I do not think this bill alters that.

Ms ANNESE: It may not alter that reality—

Dr JOE McGIRR: You obviously think it does or you would not have put it there, that is why I asked the question.

Ms ANNESE: —but what it means is that the workplace is not just about the physical environment. I think we have seen with the COVID pandemic that the workplace is really around the relationships that people have with one another and where they are, not just physically where they do their work but how they engage with one another. And, it is just important to recognise that this also includes the idea that the workplace is not just in one physical place. Any behaviour that could impact on the workplace or the relationships of people in that workplace context is relevant.

Dr JOE McGIRR: I agree. I just think that the legislation is worded to include that. I do not think it is excluded in the legislation. It refers to material detriment to the employer and where activity is taken offsite and clearly it relates to work it is work in the workplace. It addresses the issue of work in the private sphere. I am not quite sure why that would be changed.

Ms ANNESE: I just think it is important to recognise that risk is still very real even with this bill. The risk of detrimental impact on the rights of particular individuals also needs to be understood. It is not actually always taking place in what we would traditionally consider a workplace environment, as in the office. It could be the relationship that is happening but not necessarily in the office.

Dr JOE McGIRR: Well, I agree.

Ms ANNESE: Okay.

Dr JOE McGIRR: As I say, I do not think the bill alters that. Just a bit further down the page you refer to the fact that this legislation will make it difficult for government employers to implement policies if they included reasonable employee conduct rules on a religious expression outside work hours. Could you just describe for me what you would regard as a "reasonable employee conduct rule on religious expression outside of work hours"? Then I can understand how this bill, importantly, whether this bill needs to be changed in that regard?

Ms ANNESE: By "reasonable", we would expect that employers have the right to expect—maybe I should rephrase. Actually, could you just rephrase that? I think I know what you are getting to.

Dr JOE McGIRR: Well, your statement is that the legislation would make it difficult for an organisation to implement a policy that included reasonable employee conduct rules on religious expression outside of work hours. I am just wondering what a reasonable employee conduct rule on religious expression outside of work hours looks like and that will help me understand whether the bill does, in fact, impact on that.

Ms ANNESE: It would include things such as, for example, a small but particularly extreme expression of a religious doctrine that is exceptionally sexist, exceptionally homophobic or ableist.

The Hon. GREG DONNELLY: What about ageist?

Dr JOE McGIRR: Sorry, you are saying that an employer would have a set of conduct rules that affect an employee outside of work hours?

Ms ANNESE: Usually in their codes of conduct an employer has a set of guidelines for the principles or standards they expect from their employees. What that means is that if there is behaviour that has an impact on the workplace, even if that behaviour is taking place not in traditional workplace hours, it still has the impact.

Dr JOE McGIRR: Well, I am not talking about a situation where behaviour has an impact on the work. I am talking about an expression outside of work hours where it does not have an impact on work. Perhaps you have an example of one of your organisations that has one of these policies.

Ms ANNESE: If behaviour does not impact on an organisation and if behaviour does not impact on individuals within the workplace or the capacity of an organisation to do its business, it is unlikely to be problematic.

The Hon. MARK LATHAM: Is that answering the question, though?

The CHAIR: Excuse me, comments will be directed through the Chair.

Dr JOE McGIRR: You made the point about the exclusion of minority groups in response to Ms Leong's very good questions. I think the bill is an important part of addressing the issues affecting those minority groups. You talk about the increased pressure on employers if the bill comes in. Do any of the employers in your organisation in other parts of Australia where there are religious discrimination Acts have pressure on them? The second question is—I guess it is a segue to that—I think your contention is that the bill preferences religious expression or freedom over other rights.

Ms ANNESE: Yes.

Dr JOE McGIRR: That seems to be the key, from what you are saying. Where can you show me your concern about how this privileges or gives a hierarchical preference to religious issues, freedom and so on?

Ms ANNESE: Because it is proposing that if something is a deeply, genuinely held belief on the grounds of it being a religious belief that someone genuinely holds, that you are then somehow exempt from it being seen as discriminatory. If you were to say the same thing but it was not religious, it could potentially be a discriminatory action or comment. Because the bill is proposing that if the view and the way it is expressed is on religious grounds, that you are then exempt from it. That is problematic in a workplace context. The same behaviour would not be acceptable if it was just because someone was homophobic, for example, without respect to it relating to their religious beliefs.

Dr JOE McGIRR: Yes, but I guess the point is whether this is somehow preferenced over those other rights that are also protected under the Anti-Discrimination Act.

Ms ANNESE: I think it is because other rights under the Anti-Discrimination Act are the rights to essentially be—the right to be a trans person and not have employment denied or not be bullied or harassed in the workplace; the right to be a woman and not be discriminated against on the basis of your gender. We are not proposing that there should not be protection for people on the basis of having a religion or being religious, it is in the expression of that religious view that harms other people. That is where the problem is.

Dr JOE McGIRR: Okay, thank you. I am not convinced that that is an argument that this is preferenced. I will leave my questioning at that point.

Ms TANIA MIHAILUK: Back to some of the earlier comments, Ms Annese, you were saying that you have a number of religious organisations, for example, that are members. Do you know of any of them that are members?

Ms ANNESE: Yes, Uniting Care is a member, Anglicare were a member—I am not sure if they still are a member—and we have had religious schools that have been members.

Ms TANIA MIHAILUK: Are you able to provide the Committee with the details of exactly which religious organisations are currently members of Diversity Council of Australia on notice?

Ms ANNESE: Absolutely.

Ms TANIA MIHAILUK: You made a comment that Rugby Australia, for example, has a right to values. That was an interesting comment to make that an organisation has a right to values and you also made a comment that a person's workplace is part of their identity. Do you not accept, then, that faith for many employees out there of your member organisations is also part of their identity and that they might have a right to values as well?

Ms ANNESE: Absolutely, I completely agree with you that someone's faith is part of their identity and it should be protected.

Ms TANIA MIHAILUK: It should be protected but it currently is not.

Ms ANNESE: I know.

Ms TANIA MIHAILUK: On top of that, can I just ask, if that is your view, I find it very difficult to understand some of the argument in your submission, particularly given that you have raised the need to almost say that somebody cannot express their faith. I think it is quite clear that you cannot just have a religion without expressing that faith and religious activity is, perhaps, a very big part of religion. Whilst I accept that workplaces

absolutely have a right to what happens within a workplace—whether it be nine to five or whatever the hours are—it is difficult to argue that any employer should control what someone wants to express.

Ms ANNESE: Well, look, in a workplace setting expression is about behaviour and all workplaces have rules about what is acceptable behaviour.

Ms TANIA MIHAILUK: In workplaces.

Ms ANNESE: Yes.

Ms TANIA MIHAILUK: You are also suggesting now that with COVID and people working from home that could now extend to people's homes. Is that what you are suggesting—that sort of control of somebody's faith and the way they express their faith?

Ms ANNESE: I think COVID has taught us that the workplace is not a physical environment. That has been true especially for the Commonwealth anti-discrimination law where in that legislation we talk a lot about what the workplace is. The key thing here is: Through the expression of your faith, is that having a detrimental impact on the rights of people in a workplace context? In some extreme examples, it is possible that the bill—that that could play out and that would be difficult for workplaces to manage from a practical sense but also—

Ms TANIA MIHAILUK: But there is a civil process proposed here that could deal with those sorts of very extreme and unusual examples.

Ms ANNESE: The only thing I was going to conclude my comment with is that of course we do not want employers to have to spend their time in court if we can just have a piece of legislation and propose a bill that protects religion—

Ms TANIA MIHAILUK: Without expression.

Ms ANNESE: —in the same way that protects other attributes.

The CHAIR: Thank you.

Ms ROBYN PRESTON: Thank you Chair. I am just reading from your submission where it says:

Australian organisations are aware of the importance of creating diverse and inclusive workplaces and there is a strong and growing business case that inclusion fuels performance and wellbeing...

And we heard that in your comments a little earlier. You also said that you support the protection of religious beliefs as well but it was important in the workplace where all people need to feel safe to be there. We should not privilege one right over another. I am just picking up the words that you said here, I wrote them down. When creating an inclusive workplace, it is important to recognise people's identities—for example gender equality—as well. Also, is that not recognising gender equality and not recognising religious beliefs because at the moment we do not have an amendment that covers that, is that not preferencing one human right over another?

Ms ANNESE: I think that there is a gap in current anti-discrimination law and we should definitely look at that. But we need to look at that in a way that does not privilege religion over other rights.

Ms ROBYN PRESTON: So at the moment though there is no privilege over religious rights in the workplace at all.

Ms ANNESE: No, that is right.

Ms ROBYN PRESTON: So they are at a disadvantage to anyone else who is getting inclusive preferential treatment and support over someone else who has religious beliefs that others find offensive. So there is no avenue for that person, with their religious beliefs, to have any support in the workplace to feel inclusive.

Ms ANNESE: I will be honest with you. Most of our member organisations include that in their general diversity and inclusion policies even though it may not be in the law.

Ms ROBYN PRESTON: But there is no guarantee going forward.

Ms ANNESE: That is very true so I think it is important that we do have that protection for people to have religion and be religious and not have a risk to their own personal wellbeing and health in a workplace context.

Ms ROBYN PRESTON: Thank you. So given that if we do not have a structure in place at the moment this amendment proposes to provide that protection and, as we have seen, there is nothing in the Anti-Discrimination Act [ADA] at the moment and we have been 20-odd years and there has still been nothing formed to protect the religious rights of people in the workplace. What do you propose is the solution then?

Ms ANNESE: I think that the New South Wales Anti-Discrimination Act is long overdue for review—absolutely—and I think that religion needs to be included as an attribute for protection.

Ms ROBYN PRESTON: How far should we go though because you are saying what is before us is too far?

Ms ANNESE: Yes. I think, as I have said, that religion should be treated like other protected attributes. You should have a right to your religion and a right to not be excluded from employment or opportunities on the basis of your religion.

Ms ROBYN PRESTON: Thank you for acknowledging that there is a gap in that in the workplace at the moment. I appreciate that.

The CHAIR: You had a minute to go, Ms Preston, but we will move on.

Ms ROBYN PRESTON: I am fine.

The CHAIR: Mr Singh?

Mr GURMESH SINGH: I will take it.

Ms ROBYN PRESTON: I proxy my one minute.

The CHAIR: Six minutes and ticking, Mr Singh.

Mr GURMESH SINGH: Thank you both for coming today. Your organisation in the work that it does, does it provide advice or guidance to its members firstly on general terms but on specific terms as well—on specific items that they might come to you with?

Ms ANNESE: As a rule we tend to just engage with them more generally because we produce research. That is one of the main products that we offer them and we run events. But members do come to us with questions from time to time or they might engage and seek advice. We never give legal advice, obviously, to a member but we will tell them what best practice might look like. What are their aims and what best practice might look like applying the evidence framework that we always apply in these cases.

Mr GURMESH SINGH: So looking at a particular case like Israel Folau's sacking. I guess there were two issues there. One was the sponsorship issue with QANTAS. Another was his losing his employment—or place of employment—because of things he has said outside of work. Earlier you said that religious expression is unlikely to be problematic outside of the workplace. But here we have seen an example of someone completely stepping outside of the workplace and losing quite a lucrative career over that at the prime of his career. Do you have any comments on that particular case? You do not have to agree with what he said but the fact that he said it and then lost that career had nothing to do with the workplace. I would just like to hear your comments on that.

Ms ANNESE: I suppose it depends on who you think his workplace was? Rugby Australia? I think QANTAS was mentioned earlier?

Mr GURMESH SINGH: I am talking particularly about Rugby Australia. QANTAS was a sponsor.

Ms ANNESE: Rugby Australia, okay. Again, I think that organisations have an absolute right to want to engage commercially with individuals who they feel uphold their values. I believe that most organisations would protect that. In terms of someone's right to express their religion, I think we have to accept that freedom of speech—while it is a value we hold—it has consequences.

Mr GURMESH SINGH: Okay. So if we were to see another example, for instance, of someone who was wearing an article of faith outside of the workplace that did not fit with the values of that particular workplace and they lost that job, would that be something you would see as acceptable? It is a purely hypothetical example.

Ms ANNESE: Yes. I would struggle to see how someone's wearing of an article of faith would be detrimental to a workplace's image or reputation. That is the connection that I would be looking for.

Mr GURMESH SINGH: I have thought of an example. Let us say someone was wearing a hijab and they worked at someplace that is an outback steakhouse, for example, where they have to wear a Stetson hat but outside of the workplace they might wear a hijab—I am struggling for examples here. But as an example—

Ms TANIA MIHAILUK: There are a couple of outback steak places.

Mr GURMESH SINGH: —for instance, I know it is a silly example. But if the owner of that restaurant—

The CHAIR: Please, members. Can we have order so we can hear the witnesses?

Mr GURMESH SINGH: Would that be any more or less acceptable than speech outside the workplace.

Ms ANNESE: So obviously I am not a lawyer so I cannot make that legal assessment. What I would say is that employers would have to determine the impact of religious expression and whether it affects other people in a negative way. I would say someone wearing an article of faith does not make people who have particular identities feel excluded in a workplace. It is not harmful to other people.

Mr GURMESH SINGH: What about the perception of harm? I will give a much better example. A Sikh article of faith is a ceremonial dagger. If an employee working alongside someone who wears a ceremonial dagger felt unsafe should their rights supersede the right of the person to wear their article of faith to work?

Ms ANNESE: That is a good question. We actually talk about this. I would like to take that one on notice because I am trying to struggle with the detail. I would like to take that on notice because I know we have reflected on that particular type of scenario but I would like to get back to you.

Mr GURMESH SINGH: Yes. That is an important one that I think this bill is trying to address because we talk a lot about religion, but I know earlier you mentioned expressions of religion and how—I do not want to paraphrase you here, so correct me if I am wrong. You said that it is perfectly okay to have a religion but people need to be careful or tread lightly on the expressions of that religion.

Ms ANNESE: If the expression of the religion is harmful to someone else's identity.

Mr GURMESH SINGH: Again, we are talking about the perception of harm versus actual harm.

Ms ANNESE: Well, I do not know about that because we are actually able to measure the impact that workplace exclusion has on an individual and on a workplace's productivity. We can actually measure it.

Mr GURMESH SINGH: You are talking about inclusion. What about exclusion?

Ms ANNESE: And exclusion. We can measure the impact of exclusion as well through our index that we have—

Mr GURMESH SINGH: Can you see a scenario where the provisions of this bill would actually provide more inclusion than exclusion, for instance, in the example of the Sikh article of faith?

Ms ANNESE: I do think there is—and I have said this a number of times—a gap in the legislation that means people who have a religious belief or are religious do need a piece of protective legislation that brings it into line with things like gender, age or race. Yes, I do think so. I just think that there is a line we need to draw around where the expression of that religion harms other people and their right to exist in a workplace without feeling as though there is something inherently defective within them. The workplace should never be harmful to an individual.

Mr JIHAD DIB: It is a hard one at the end of the day, so thanks very much for being here. There probably is a person who wears a hijab and works at an outback station. Now at Broken Hill there is quite a big Islamic community—

The Hon. SCOTT FARLOW: I think he was saying Outback Steakhouse.

Mr JIHAD DIB: An Outback Steakhouse. What did I say?

The Hon. SCOTT FARLOW: Station.

Mr JIHAD DIB: And Steakhouse for sure, mate. Best steaks out there.

Ms TANIA MIHAILUK: And station too.

Mr JIHAD DIB: And stations. That's it. The first mosque is out there with Bobby Shamroze, who still runs it from his grandfather. Anyway, I digress. That actually was not a bad example.

Mr GURMESH SINGH: It was hard to try and find an example.

Mr JIHAD DIB: It was not a bad example at all.

The CHAIR: Order!

Mr JIHAD DIB: I suppose part of the question that I wanted to ask has been asked by Ms Preston, but just before that—would members who are part of Diversity Council Australia have endorsed your submission? Do you know of anybody who has maybe made a slightly different submission to what you have submitted to this Committee?

Ms ANNESE: We went out to our members like we always do when there is something we want to advocate on if we think that it is relevant. Anything that has got a workplace context is relevant. Then we consulted with our members. We always take the overwhelming majority position, which is what this is.

Mr JIHAD DIB: Terrific. I actually agree with your comment on page 15, where you talked about the importance of inclusive language in terms of workplaces. I think that is an important one. There is obviously clear support for the removal of discrimination on the basis of religion throughout the submission. I probably want to raise again the point raised by Ms Preston. You have alluded to it. In the absence of the Anti-Discrimination Act, which people have been calling for a review for a long time, and in the absence of a real commitment to make a change and something that actually exists, this is a proposal that we do have.

Where do we go if this thing gets put on the backburner? Because a review in itself will take an additional—goodness knows how long. There is an agreement and acceptance that nobody should use this in terms of using their faith to attack somebody else. This is about providing opportunity for everybody to be able to practice the things that are in play. I suppose the heart of the question is, in a practical way then, if you are not supportive of this and there is not a protection at the moment for vilification and discrimination on the basis of faith, where do we go? Where do we go in a quick period of time? Because I do not think that there is an appetite to push this further down the track.

Ms ANNESE: I think where we go is with an anti-discrimination bill that is similar and provides the same type of protection as other anti-discrimination—we have made that clear in our submission.

Mr JIHAD DIB: I am somebody of Muslim faith. I represent a fairly diverse community that is a big believer in treating people well and hoping that you will be treated well as well. There is that expectation that somebody may not be discriminated against because of their faith. We have heard lots of examples. I know my friend and colleague from Coffs Harbour just gave a couple of good examples, like the ceremonial dagger. That is a very important one. People's ability to express their thoughts—maybe the challenge is to do that in a non-offensive way to others. Outside of the workplace is also really important but people do deserve the freedoms to be able to be who they are, and it goes both ways. I see your point. I also see the point from the opposite end of the argument, which says something needs to be done quickly because at this point in time for the person who suffers as a result of their faith or is vilified because of their faith—you know, the young girl who plays soccer who gets called an effin' so-and-so—

The CHAIR: Is there a question, Mr Dib?

Mr JIHAD DIB: Yes. The person gets called a so-and-so, where do they go? How much longer do they need to wait? Do you have a rough time frame that you think that it should happen?

Ms ANNESE: I am not the legislator.

Mr JIHAD DIB: I get that.

Ms ANNESE: Yes. I would say that we do need—

Ms JENNY LEONG: Maybe the 16 years of the Labor Government.

Mr JIHAD DIB: We probably do not need any snide comments. I am actually asking a proper question.

The CHAIR: Excuse me, Mr Dib. Allow the witness to finish.

Mr JIHAD DIB: I will, Madam Chair, but I do not like snide comments. I am not one who makes them and I do not like them.

Ms ANNESE: We also had a piece of work last year on how to create inclusive multi-faith workplaces. This stuff is very important to us. I think that it is overdue that we have something that helps protect people's right to their religion. People should not be vilified, bullied or harassed on the basis of their religion. I will reiterate that our research shows that it happens to people from religious minority groups, not from religious majority groups.

Mr JIHAD DIB: Do you also offer services where, if there is some sort of disharmony or there are some issues in workplaces of your members, you go in there and provide solutions to them?

Ms ANNESE: No. We do not do any of that sort of HR-type work. We would provide what we would consider best practice. If you want to be an inclusive workplace, these are workplaces that have done a good job. These are some policies you can consider. We would never go in and mediate an organisation and its issues.

The Hon. GREG DONNELLY: With respect to your organisation, given you have actually placed some emphasis on the importance of research behind what you promote, have you specifically undertaken any

work regarding the experiences of those people of faith at workplaces? If you have done the research about how they feel in terms of their current standing inside workplaces today, what have you found?

Ms ANNESE: Yes. We have included religion as one of the things we measure in our inclusion index that we run every two years. We look at a whole bunch of demographics, including gender, culture, age, disability, et cetera and religion is one of them. What our Inclusion@Work Index reveals is that people from religious minority groups do feel excluded in Australian workplaces and feel as though they experience discrimination. We do not find that there are reduced inclusion experiences for people from religious majority groups.

The Hon. GREG DONNELLY: Can I invite you to go back and read the evidence in Hansard today from previous witnesses who in fact put the exact opposite position? They were representing a particular faith tradition—in fact, two faith traditions: the Baptists and the Presbyterians. Both, when asked, said that they were aware of—and they acknowledged it was anecdotal, but this was per the person's discussions with them—individuals who are faith members of their community who have spoken to them about the difficulties that they had experienced in the workplace in dealing with matters because they were people of faith. It seems contrary to what you have said, but I will move on because I have limited time. At point 3 on page 6 of your submission you say the bill "would be damaging"—very definitive. Then indented and in bold at about point 7 down the page it says, "DCA is concerned that this legislation would impair efforts". That is just a matter of speculation on your part, isn't it? You have no evidence that such a bill would; that is essentially just an opinion. Is that right?

Ms ANNESE: It is an opinion based on our consultation with our members and their ability to create inclusive work environments. We formulated that submission after consulting with our members, but it also reflects the research that we have conducted on inclusion at work.

The Hon. GREG DONNELLY: So you are quite certain, because you are saying this will be the effect of the legislation. "Would" is very clear: you know.

Ms ANNESE: Yes, "would" is very clear.

The Hon. GREG DONNELLY: Is it "may be" or "possible"?

Ms ANNESE: I suppose perhaps that word is quite definitive. However, I think it is important to recognise that all kinds of scenarios can happen if this bill is passed.

The Hon. GREG DONNELLY: But that could happen now.

Ms ANNESE: It could happen now, but at least employers have the opportunity to set their values and have an expectation that the law is not protecting particular behaviour that could be harmful.

The Hon. GREG DONNELLY: Just to that point, this is the employers' position. You are effectively an employer organisation, representing the interests of employers. The employers are seeking to mandate a particular position and you are representing that position. That is actually what is going on here, isn't it? You are not representing employees. You are representing employers, aren't you?

Ms ANNESE: We are a membership organisation and employers are our members, yes.

The CHAIR: I hear you saying, with the greatest of respect, that you agree that there is a need to have religious freedom. You seem to be saying that the expression of that religious practice is not acceptable or should not be part of that freedom because it can cause harm to others. Is that a correct summation of the proposition that you have put?

Ms ANNESE: Most religious expression will not cause harm, but some can cause harm.

The CHAIR: Some can, okay. We have heard evidence from other witnesses over the three hearing days we have had that an expression of their religious tenets and beliefs is inimical to freedom of religion, in their view. I am trying to reconcile those two propositions, to be frank. I hear you say that you would propose a review of the Act. That is not what is before us and we only know what is before us at the moment. There is a bill that proposes to protect religious freedom in all its attributes: not only having those beliefs but the practice of belief. I am trying to reconcile your proposition against what is defined by the bill to be freedom of religion and what other submitters are telling us is an expression of freedom of religion. I do not expect you on a Friday afternoon to have the answer here with you, but would you take on notice the question about how you would propose that this bill or this Committee could go forward? You are agreeing that there should be religious freedom, but you are in some way curtailing or narrowing that in a way that does not sit well with the evidence that we have had from some of the other submitters. I am happy for you to comment on it now, but please take it on notice.

Ms ANNESE: Very happy to take that on notice.

The CHAIR: I am really curious about how we might strike that balance. In my own personal view, I do not want harm to visit on other people. But I hear very clearly from the evidence that religious practice is very much their identity and the way they practice what they do in the workplace as well as outside the workplace. So you will take that on notice?

Ms ANNESE: Yes.

The CHAIR: Fantastic, thank you. You have referred a number of times to evidence and surveys, so what should we refer to? There are a lot of footnotes to your submission. Obviously there is the survey where you talk about prejudice or impact on non-Christian people versus Christian people. Is there anything else that you would like to draw to the Committee's attention by way of data, evidence or surveys that we should consider?

Ms ANNESE: DCA's *Inclusion@Work Index* is the piece of research that I am referring to, because that is where we measure across nine demographic areas the workplace experience of Australians across the labour market every two years.

The CHAIR: Could you take me to an endnote that that would all be encompassed in?

Ms ANNESE: Yes, I will just get Ms Dunbar to find that.

Ms DUNBAR: Number 4.

The CHAIR: Great, so that is publicly available?

Ms ANNESE: Yes.

The CHAIR: Is there anything further that you would like to provide to us for the Committee to consider?

Ms ANNESE: DCA has produced multi-faith guidelines for employers on creating cohesive workplaces with people who are religious and non-religious. That could potentially be really useful, because we do talk in that about striking that balance between religion and other human rights.

The CHAIR: Okay, I would welcome that if you would like to bring that back on notice. Thank you, that is the end of my question. Mr Greenwich.

Mr ALEX GREENWICH: I am sorry for this question to bring you back—

The Hon. MARK LATHAM: Point of order: Mr Faraway seems to have been jumped.

The CHAIR: No, we have finished. This is free time.

The Hon. MARK LATHAM: What happened to his circuit time?

The Hon. SAM FARRAWAY: Weren't we going in alphabetical order in free time before?

The CHAIR: No, not at all. It is Mr Greenwich. Would you like to take a question after Mr Greenwich?

Ms TANIA MIHAILUK: I have put my hand up for a while now, Madam Chair.

The CHAIR: Mr Greenwich.

Mr ALEX GREENWICH: Thank you, Madam Chair. Israel Folau posted amongst other things a meme that said gay people—people like me—are going to hell. Obviously Rugby Australia took action in that case. Israel Folau also took action. He went to the Fair Work Commission and there was what is estimated to be a million-dollar settlement in favour of Mr Folau, so it has been resolved in that way. Could you talk to the impact that a public statement on a public platform like that would have on other gay members of that organisation?

Ms ANNESE: Massive. We did a piece of work called *Out At Work* two years ago—after the same-sex marriage law was passed but over that period—where we were able to identify what the experience is for LGBTQ-plus people in the workplace and the impact that that particular debate had on people. It was really traumatic and difficult. To be told that your very existence is something to be ashamed of is deeply homophobic and very harmful. It is not a stretch to understand why. If you want more information on that I can certainly provide it, but we did a piece of work called *Out At Work*. We also produced a piece of work that came up earlier this year where we looked at the intersection between people who are culturally and linguistically diverse and also LGBTQ. We were able to identify that, like any other group, it is obviously not a monolith and there is a wide variety of experiences. We try to assist people to understand the diversity within that group. But those sorts of statements can be very harmful to people, especially if they are made by people with power.

Mr ALEX GREENWICH: I would also commend to the Committee to read the story of the rugby player who shared his story of coming out over the weekend and the impact that statements such as that had had on him and other players.

The CHAIR: Mr Farraway, go ahead. I remind the Committee that we do have a finish time for testimony in six minutes.

The Hon. SAM FARRAWAY: Thank you, ladies, for attending today. I want to touch on section 22Z of the bill regarding the prohibitions on religious dissemination by government agencies. I want to give you an example and I am very interested to see what your organisation's view is on this. You may or may not be aware of the example. It is from Western Australia. As you would know Margaret Court, one of this country's finest sports stars—

The Hon. GREG DONNELLY: Hear, hear!

The Hon. SAM FARRAWAY: She runs the Margaret Court Christian life ministry in Perth and does some fantastic work. The question I have or the example I want to give you is that recently her organisation during the COVID pandemic, which does a lot of good work for the vulnerable and homeless in Western Australia and particularly around Perth, approached Lotterywest, which is a State Government body in WA, for financial assistance in helping buying a food van. That was given the extra demand in services during the current pandemic. I will quote what was reported in parts of the media at the meeting between this organisation and the State Government agency. Ms Court was told by the agency, "We do not discriminate. We sponsor the LGBT parade but not this church charity outlet, given your views on same-sex marriage." What is your organisation's views in particular around section 22Z of this bill?

Ms ANNESE: It is probably important to reflect that same-sex marriage did not have a negative impact on people who it did not affect. It did not affect people who it did not affect. That is a really important premise to recognise. I actually do not know much about this particular situation. I would be very happy to take that on notice. But I do think it is important to not assume that people who were trying to achieve rights that other humans in Australia had is in the same class as people taking away rights from others. I cannot comment on this particular case, but as a principle—

The Hon. SAM FARRAWAY: But in terms of government agencies, especially section 22Z, what is your view around a State Government agency—irrespective of what your view is on same-sex marriage or your view on a certain religion or an individual—essentially picking and choosing which demographics or which parts of society they wish to sponsor, support or have commercial activity with?

Ms ANNESE: But don't organisations pick and choose all the time?

The Hon. SAM FARRAWAY: Yes, but we are talking about State Government agencies.

Ms ANNESE: But they would probably pick—again, this is hypothetical for me, but I would support an organisation wanting to engage in a contractual relationship with an organisation who shares its values.

Ms TANIA MIHAILUK: If I can just ask you—and, look, you can take this on notice. I would like to know the number of the research studies and papers that you do over the course of a five-year period. How many specifically out of the number that you do that look at the discrimination that an employee of one of your member organisations, for example, might—should they experience some discrimination based on their faith or based on the belief that they are not able to practice their faith or that they feel some vulnerability at their workplace? I do not know if you have conducted that type of research, but I would be keen to know that sort of research. I would also like to know how broad your research is and what sort of parameters you use; so, whether your research is beyond your membership base. Are you conducting phone interviews, private interviews or face to face interviews? Are these voluntary anonymous surveys that people are participating in? Can you provide that sort of detail? I appreciate that you might not be able to respond to that now, but I would like to see that.

Ms ANNESE: I am happy to take it on notice because we do quite a lot of research. We probably produce three significant pieces every year that we put out. Not all of them relate to religion because we look at a whole bunch of—

Ms TANIA MIHAILUK: Because you decided to participate in an inquiry on a bill that is looking specifically into religion.

Ms ANNESE: Yes, but you asked me more generally.

Ms TANIA MIHAILUK: You have extensively referred to the data that you collect—empirical data. I would like to see specifically the data that you collect with respect to any of your member organisations and any of their employees experiencing discrimination or any vulnerability on the back of an inability for them to have

that sort of protection with respect to that freedom or rights to freedom of religion. I am not sure if you do that. That is fine if you do not. But if you have any kind of data in that respect or any studies—

Ms ANNESE: Yes, we do. It is the Inclusion@Work Index that I referred to. I only went more broad with our research because you asked the question, "How much research do we do?" The Inclusion@Work Index is an index, as I said, that we run every two years. We run it across the whole labour market, not just with our members, so we are able to compare a representative portion across the labour market. We are very careful with our methodology and it does hold up to scrutiny because people do scrutinise what we do. We take a labour market perspective. We run that every two years and then we compare it to what happens with our members. We can assess how our member organisations perform and how the labour market performs because we are able to see—organisations that are active in the diversity and inclusion space might see X, Y and Z, for example.

Ms TANIA MIHAILUK: So, how do you reach out to businesses, for example, in Bankstown? Are they surveyed, for example? That is what I am asking you—your methodology there. How do you reach out? Do you do telephone interviews? How do you reach out to the labour market beyond your member organisations?

Ms ANNESE: For the Inclusion@Work Index we have a survey that we administer broadly using—I have to get back to you with the exact nature of how that gets administered across the labour market, but we can certainly take that on notice and get back to you. I am very happy to reassure you—

Ms TANIA MIHAILUK: So, you do not know if that is telephone interviews or face to face?

Ms ANNESE: It is not telephone. We do not conduct—

The CHAIR: Ms Mihailuk, I am conscious of time. Are you happy to have that question answered on notice?

Ms TANIA MIHAILUK: Yes, thank you.

The CHAIR: Mr Latham, it is 4.45 p.m. on the dot, so please be mindful of that.

The Hon. MARK LATHAM: I will sneak in with my 10 seconds. I was interested that earlier on you mentioned the out of work code for religious speech that you have developed. Are there other such codes for other identities? Under them, how would you handle a situation where a non-religious person of one of the other personal identities posted something on Facebook at 10 o'clock at night saying, "I really hate Christians, particularly the ones I work with, because they're idiots and they all believe in the sky fairy?"

Ms ANNESE: The Out at Work research was specifically looking at the workplace experiences of the LGBTQI+ community, many of whom include people who are also religious and LGBTQI+. In relation to what you just said, we would think that behaviour which makes people who have religious faith feel discriminated against, harassed and bullied is just as unacceptable.

The Hon. MARK LATHAM: But you have only got one code.

Ms ANNESE: I do not understand.

The Hon. MARK LATHAM: You said there was an out of work code for religious speech.

Ms ANNESE: No. Out at Work is a piece of research that we did looking at the experiences of the LGBTQI+ community.

The Hon. MARK LATHAM: Okay. Have you looked at the experience of religious people at all?

Ms ANNESE: Yes. We do in our Inclusion@Work Index, yes.

The Hon. MARK LATHAM: No, but in your research there about—

Ms ANNESE: In Out at Work?

The Hon. MARK LATHAM: Yes.

Ms ANNESE: That was one of the reasons why we wanted to look at the intersection between—in our Intersections at Work research that we did this year. Yes, we did look at that.

The Hon. MARK LATHAM: What did that show?

Ms ANNESE: That the experience of LGBTQI+ people is diverse and that not everyone has the same—

The Hon. MARK LATHAM: No, no, no. I thought you said you looked at religious people.

Ms ANNESE: People of religion? Again, I would have to get back to you with what that specific research revealed about religion.

The CHAIR: Mr Latham, are you happy for this question to be taken on notice?

The Hon. MARK LATHAM: If you could table the report, that would be handy.

Ms ANNESE: Yes, we are happy to table the report. But I will say that it is the Inclusion@Work Index where we really measured it and in that we noticed that people from minority religions did experience higher than normal levels of exclusion in the workplace.

The Hon. MARK LATHAM: That is why we are doing the bill.

Ms ANNESE: But not people from majority religions. That shows me that there is a need to protect religion as an attribute.

The CHAIR: Witnesses, thank you very much. That was intensive for you, I know. I wanted to thank you very much for being respectful and courteous in your responses. There will be the questions that you have taken on notice. When you receive a corrected transcript, which will come to you from the Committee secretariat, there may be additional supplementary questions from members. You are not bound to respond, but obviously we really welcome responses as we form a view. Thank you very much again for the submission and for your time today.

(The witnesses withdrew.)

The Committee adjourned at 16:47.