

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 Jubilee Room, Parliament House, Sydney on Monday, 16 November 2020

The Committee met at 9:00 am

PRESENT

The Hon. Gabrielle Upton (Chair)

Legislative Assembly

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

Legislative Council

The Hon. Greg Donnelly
The Hon. Scott Farlow
The Hon. Sam Farraway

PRESENT VIA VIDEOCONFERENCE

The Hon Mark Latham MLC
The Hon Catherine Cusack MLC

ANNABELLE BENNETT, President, Anti-Discrimination NSW, before the Committee via videoconference, affirmed and examined

The CHAIR: Welcome to our fourth hearing day. Before we start, I acknowledge the Gadigal people and pay my respects to Elders past and present. Dr Bennett, welcome this morning. What we have agreed to do, given your timing and the fact that we have a large number of members of the Committee, is to assign each member in rotating alphabetical order three minutes to address a question to you and for you to answer. Obviously we will allow people to finish their thoughts or their sentences. We have found that that works quite well, although we would normally give five minutes, but we will see how we go. The intention is that we hear as much as we can from you today. Do you have any questions about the way that we will run the proceedings this morning?

Dr BENNETT: I do not think so, I only would make the comment that at the moment someone is not on mute and there is a lot of noise coming, of turning of papers and things, which is making it quite hard for me to hear. That is the only observation I make.

The CHAIR: That could be members of the Committee. Could members push their microphones away from their papers? Members on Webex, which I am sure you do because we have not had this issue previously, Ms Cusack and Mr Latham, if you could be on mute unless speaking?

Dr BENNETT: They are on mute; I can see that they are on mute. I do not know if it is just someone at a desk somewhere who is not—

The CHAIR: Thank you, Dr Bennett. I have just requested members, unless they are speaking, to push their microphones away. They are voice activated. The first question this morning is from Mr Faraway.

The Hon. SAM FARRAWAY: Thank you, Chair. I have left my folder in my office, but I will ask a general question. Thank you, Dr Bennett. From reading your submission, obviously you are not overly supportive of the proposed bill. Is that fair to say?

Dr BENNETT: I think it is fair to say that we are supportive of the concept that there be a provision that there not be discrimination on the grounds of religion, but we are not supportive of this particular bill in the way it is drafted. We have pointed out a number of individual matters that arise from this particular draft bill.

The Hon. SAM FARRAWAY: What is your single biggest concern with the proposed piece of legislation or proposed bill put forward?

Dr BENNETT: Probably the single biggest concern, although when I say it is the biggest, there are a number of them, but the single biggest concern is probably the fact of the impact it will have on Anti-Discrimination NSW [ADNSW] in trying to administer this particular bill. It makes it almost impossible, with the resources that we have and the nature of the body that we are, to administer what is envisaged within this proposed bill.

The CHAIR: Thank you, Mr Faraway. We will move on to Mr Greenwich.

Mr ALEX GREENWICH: Following on from Mr Faraway's questions, you raise a number of concerns about the broad definitions that are used in the proposed bill. If you could talk to your concerns about those, particularly in regard to religious ethos organisations and religious belief, and also how the proposed legislation compares to other jurisdictions and any suggestions you may have there.

Dr BENNETT: I think the overarching thing to make a point of first is the principles of the Act that come in, which is something that we have never had before in our lives. Previously we had very fluid and overarching principles which were the bedrock in discrimination, in that they protected the people of New South Wales. This brings in something that is going to be, in my personal view, almost impossible for the bill to deal with, which is that in carrying out its functions, let alone making determinations, we have to have fundamental regard, whatever that may mean, to a number of international provisions of covenants that make it very difficult for our people to know what to do.

In addition, of course, we have the question of the impact on the community in not knowing what rights and responsibilities they have. So we have the whole question of introducing a human rights element with competing and large philosophical and practical issues in the principal Act, and within the actual definitions themselves people have to understand not only what is the range of possible beliefs that could be in any religion but it goes to what that person holds, what the person is thought to hold or what they may have held in the past or in the future. Matters such as that are very difficult to evaluate or to understand. Not only do we have difficulties

in giving people advice or in taking inquiries or to understand what we do, or in educating the public, but we have concerns as to how the public would understand what their rights and responsibilities are. So very broadly they are some of the matters that arise from the breadth of the [Inaudible].

The question of what constitutes something that is in accordance with a tenet of a religion is also, as you would understand—it is not rocket science—a very difficult concept because almost every religion has a range of views within it, from a relaxed view to a more [Inaudible] view that may arise, and I think this gives enormous difficulties for Anti-Discrimination NSW [ADNSW] and also for the public.

Mr ALEX GREENWICH: Thank you, Dr Bennett. Would it be—

The CHAIR: Mr Greenwich, we are at three minutes, so I am going to go to Mr Latham.

The Hon. MARK LATHAM: Thank you, Annabelle Bennett. I found in your submission a number of things that are just not factually correct and I will list those in supplementary questions to you, but in particular if I could take you to the remarkable statement on page 7, that in the bill you say:

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

What are you saying there? You are actually saying that you are happy to have a bill enacted against religious discrimination if you personally get to decide what will not be an acceptable form of religious belief and when you say "archaic and outdated" religious texts, are you not referring to the Bible? Does that not explain the reason why you accepted the complaint against Israel Folau [Inaudible] and also enabled Garry Burns [Inaudible]?

Ms JENNY LEONG: Chair, we cannot hear Mr Latham.

Dr BENNETT: Mr Latham, there was a lot of interference for some of that question, but we will try to get it later on in the transcript. I will have to take some of it on notice because there were a lot of matters there.

The CHAIR: Excuse me, Dr Bennett. Mr Latham, just so that we are clear as well, could you summarise that in a quick proposition to put to Dr Bennett and she may then choose to take it on notice.

Dr BENNETT: I did not hear that at all.

The CHAIR: Mr Latham, can you hear me?

Dr BENNETT: It is going in and out.

The Hon. MARK LATHAM: Dr Bennett never appears in person. We have had the problem prior—

Dr BENNETT: I am sorry, Mr Latham, I was asked to make myself available only on today and I have a board meeting starting at 10 o'clock.

Ms JENNY LEONG: Unacceptable, Chair.

Dr BENNETT: [Inaudible]

Ms JENNY LEONG: Point of order—

The CHAIR: I have a point of order. Excuse me, Dr Bennett, I will take a point of order from my Committee members.

Ms JENNY LEONG: There is clearly a problem with the internet connection for both Dr Bennett and Mr Latham. Both of their connections are crackly and we cannot hear them. I do not think it is helpful or useful for there to be a side dialogue between Mr Latham criticising the witness when we can only hear part of it and you are supposed to be the Chair, and clearly they are struggling to hear us. I appreciate that we are limited in time but I think it is—

The CHAIR: Excuse me, members, there may be technical difficulties. What I would advise, and I have been advised by the Committee staff, is that we have Mr Latham and all the members on Webex turn their visual off, which we found with other hearings simplified the hearing of questions. Dr Bennett, thank you for your patience. This is always an issue that we have when we have virtual or videoconference hearings, but we may have found a resolution, so we will try again. Mr Latham, there is one minute remaining. We stopped the clock while we had the point of order. Could you quickly summarise your contention to Dr Bennett so that she can complete an answer or take it on notice?

The Hon. MARK LATHAM: I took Dr Bennett to the remarkable statement on page 7 of her submission, which basically says she is in favour of an Act against religious discrimination as long as she can define what is in the text of the mainstream beliefs of the religion and wants to rule out archaic and outdated interpretations of religious texts, which I take to mean the Bible, which explains why I was saying that Israel

Folau should never have had that complaint accepted against him by Garry Burns under section 56 of the Act. How can we take any of this to be a credible submission from an organisation that says it wants to define what is acceptable or mainstream beliefs of a religion?

Dr BENNETT: Mr Latham, first, I reject completely your characterisation of what we have said in our submission. To the extent that that constitutes a question that I can take on notice and reiterate what we have said, I will do so, but I do not accept the characterisation at all that you have made. There is a general statement [Inaudible] that is not referring to any particular text, and certainly not to the Bible. That is the first point, and the rest of it I will deal with in writing. So far as individual complaints are concerned, that is not the subject of this, as I understand what I am meant to be answering here, and I cannot, as you know, speak publicly about any specific complaints by reason of the secrecy provisions of the Act, so I will not do that in this public forum.

The Hon. MARK LATHAM: Another wrong answer.

The CHAIR: Excuse me, Mr Latham, we are moving on to our next member of the Committee, Ms Leong.

Ms JENNY LEONG: Thank you, Dr Bennett. Given the short time frame, could you speak specifically to the concerns you raise around the bill at point 5.8 of your submission, specifically in relation to the practical operation of the bill, and if you have time in the three minutes I would also appreciate any insight you can give into your concerns around the potential for industrial organisations to be identified as religious ethos organisations.

Dr BENNETT: Can I just make a point, I am sorry about the time, but there is a lot of interference from paper turning. I do not know if it is the office part of this hearing, but I had trouble before and I must say that I did have trouble just now, so if I can just ask: Was the first part a reference to the vilification provision?

Ms JENNY LEONG: The first part was in relation to point 5.8 of your submission, so the practical operation of this bill and how it would create contradictions between religious protections and the other protected attributes in the bill.

Dr BENNETT: Okay.

Ms JENNY LEONG: The second was in relation to the risks around industrial organisations being identified as religious ethos organisations.

Dr BENNETT: I think the second part I can deal with very quickly. As I understand the meaning [Inaudible] what can claim to be an ethos organisation, and that broadly I think is one of the concerns we have [Inaudible]. Otherwise I can point it out specifically on notice. The vilification question is another one, which is that in all of the other aspects of discrimination dealt with by the Act there are provisions for the fact that you can, for example, make a fair reporting of an act, you can communicate in certain circumstances. Something done reasonably in good faith for academic, artistic, scientific or research purposes is exempt from discrimination. Here [Inaudible] it seems only matters that are subject to imprisonment, and we see that as being inconsistent with the rest of the provisions in the Act that allow for certain actions to be taken or preclude certain actions. Here the only limit is actions that would be liable for imprisonment, and that is inconsistent with other discrimination bases. Does that answer your question?

Ms JENNY LEONG: Thank you, I appreciate that. If we do have time left, Chair—

The CHAIR: Thirty seconds.

Ms JENNY LEONG: The only other question I wanted to ask is whether you are aware of any other jurisdiction that specifically pulls out paragraph 18 (3) of the International Covenant on Civil and Political Rights [ICCPR] and puts it into their legislation as opposed to referring in full to international conventions or covenants.

Dr BENNETT: We are not aware about any other [Inaudible] that has had these provisions brought in, and that adds to the fact that we are an anti-discrimination board. This brings in an entire human rights element that we do not have and we do not believe any of the other boards in the country have this proposed incorporation.

Ms JENNY LEONG: Thank you so much, Dr Bennett.

Mr PAUL LYNCH: Dr Bennett, at point 5.5 in your submission you I think correctly note that the bill is unusual in that it provides that organisations can hold beliefs. Are you aware of any other legislative provisions anywhere that require or deal with organisations as being able to hold beliefs, despite the fact that they are not sentient organisations?

Dr BENNETT: I think it is at 5.5 that we do not understand that it is common to find that organisations themselves can hold beliefs and what amounts to an organisation holding a belief, and I think we have raised there, as you have pointed out, that it is unclear whether it will be the majority of staff or a minority, or the board

or matters such as that, so we do raise that as a question, as to how one deals with the fact that an inanimate body, if I can call it that, holds a belief, and I would have to go into corporations principles I suppose to go further into working out how that would work.

Mr PAUL LYNCH: In your submission you point to what you say is an apparent conflict between section 22Z of the bill and section 54 of the Act. How do you think the courts are going to make sense of that?

Dr BENNETT: I am not here as in a previous iteration of myself. I am aware that courts—I mean we are not a determination body. That is the difficulty we have. We also see an enormous problem for us in trying to deal with our job under the Act, which is to conciliate disputes, and if we cannot conciliate them, of course, we send them on. Some of these matters are incredibly complicated. I am sure you are all aware of the difficulties that the courts have had in trying to work out what constitutes the tenet of a religion, what is involved in that and all of the complexities that this would bring in in terms of Corporations Law, what constitutes conforming to a religion to determine what it is and how to do that. These are huge complexities that even the courts have trouble with, let alone administrative bodies such as ADNSW where we are trying to conciliate disputes between parties and at the same time we have to be aware of a way in which we can explain to the parties what they can do.

We find that the general incorporation of these international agreements or covenants make it very difficult without even providing for a checklist within the statute itself that would enable someone realistically and practically to work with it. Often you have, "Take the following into account", (a), (b), (c), (d), (e), (f), (g), and we have that in other parts of our Act, and that makes it possible for people at the inquiry level or the early conciliatory level, who are not necessarily human rights lawyers, let alone to any extent to be able to work with something in a practical day to day concept in trying to help both complainants and respondents understand their rights and responsibilities but ultimately to conciliate.

The CHAIR: Mr Lynch, you have about 30 seconds.

Mr PAUL LYNCH: Your submission also says, I think correctly, that the principles referred to in section 3 of the bill are usually things that are used to draft legislation rather than to inform decision making. Are you aware of any other jurisdiction that tries to use Siracusa Principles and the other items as a guide to decision making rather than as a guide to drafting legislation?

Dr BENNETT: We do not make decisions and I am not going to go into what the court would do with [Inaudible] but we do not normally have a body that has to deal with something like this in this form. These have not been incorporated into Australian law so far as we are aware, but to incorporate them in this form [Inaudible] I am not going to say unworkable, but I cannot imagine how they could be made to work.

Dr JOE MCGIRR: Dr Bennett, can you hear me?

Dr BENNETT: I can. There is a bit of rustling happening, but I can hear you. I am trying to make out the questions as best as I can.

The CHAIR: Thank you, Dr Bennett, I appreciate your patience. If members could push the microphones away from their papers, then we will have only the speaker with the microphone in front of their mouth.

Dr JOE MCGIRR: Thank you, Dr Bennett, for appearing at short notice. One of the major issues that you raise in your submission is the concern that this legislation may have an impact on the rights of others, and of course we would be very concerned to make sure that that does not happen. You have also raised an issue around organisations, which has come up before with other witnesses. I just want to make the comment that I think it is in the nature of religious practice and belief to form organisations—it is an important component—so we do need to consider that, and I think a lot of the concerns about balancing rights do come back to that issue. I think the inclusion of the Siracusa Principles, which was a recommendation of the Ruddock review, is an attempt to balance that with reference to international covenants.

I appreciate the comment that you have made in relation to additional work, but I will add that I am not sure that additional work is a reason for not passing necessary law. I ask this question though: I am not aware of other balancing mechanisms and I am wondering whether, if the section referring to international covenants and the Siracusa Principles were amended, and you have suggested in your submission one way that it could be amended, to make sure that those principles were taken into account across all areas of discrimination so that the perception of some sort of privilege for religion was not there, I wonder what your comment or view about that would be, just given the importance from what I have said about the need to get this balancing right.

Dr BENNETT: First, let me say that I am only speaking as the President of the Anti-Discrimination Board and not in any other capacity. The first part of it is that there are no balances here that give exceptions back to other forms of discrimination in a way that was considered appropriate, for example, in the present situation to

have the exceptions that are there for discrimination for schools and matters such as that. But let me just take that—there were a number of points that you made comments on and I am not quite sure how far I can answer them. Under the principles of the Act, as I see it, that says "fundamental regard to these" with regard to everything, so in a way that does bring it in with regard to every aspect of what we do, and that is what is being said in the principles section.

There are a number of difficulties. One is that, as I said, there is no specificity in this for a way in which a person can actually administer it. This bill has been drafted in a way that I understand is trying to deal with a very complex problem and in an academic sense there is some very good material in here if one was looking to expand as much as one could to protect a religion, but it does not work practically. Some of the other ways it does not work is—I have raised the vilification question and the fact that there are certain exemptions for other bases of discrimination [Inaudible] here. There are certain requests [Inaudible] organisations that [Inaudible] balance for other forms of discrimination. I do not think it is only an example of specificity. Something has to be given to the practicalities of making this work, and I cannot give advice on what would work, but this bill to us just raises too many issues for us in being able to administer the Act [Inaudible] information to the public and trying to actually have our people understand what it is and what they are meant to take into account when looking at the form of section 3 here, which just brings two big areas into the day to day work of people in an organisation practically, in an administrative organisation.

The CHAIR: Thank you, Dr Bennett.

Dr BENNETT: And there are no provisions for exemptions. This bill also stops us in granting any exemptions, which we can do for any other part of the Act except for parity under this bill for part 2B.

Ms TANIA MIHAILUK: I want to refer back to your view on section 22M. I am not sure if you have heard of or read any of the other submissions, but I quote in reference to Bishop Michael Stead, the Anglican Bishop for Sydney:

Not doing anything that is foreign to international jurisprudence or international law on the recognition of religious organisations, their right to manifest their belief is very clear in international human rights.

Is this consistent with your understanding of the recognition of religious organisations internationally? Do you have any insight in that regard, Dr Bennett, or not?

Dr BENNETT: No. I do not even think, unless you really want me to, I could even take that on notice.

Ms TANIA MIHAILUK: I am happy for you to take that on notice.

Dr BENNETT: I do not know if I can take it on notice. That is a very complex question about recognition of—we are not a human rights organisation until this [Inaudible]. We are an anti-discrimination organisation. International jurisprudence and international recognition is not something that the Anti-Discrimination Board has looked into and whether or not international bodies have binding effect upon a New South Wales administrative body is a bit beyond what I have looked at to date and I am not sure that I can give any sensible answer to that question, I am sorry. I can have a look at part of it on notice, but I would not be sure—

Ms TANIA MIHAILUK: No, that is fine. You clearly make submissions on a variety of different issues, including this inquiry, and you have made submissions with respect to the Marriage Equality Act and the Federal legislation. Has your office put any thought in recent years into how you can actually protect religion? I note in your submission you refer to ethno-religious groups having some form of protection, but obviously the vast majority of people with a faith in New South Wales are not protected by the Act. Has your office put any studies forward in how you think our State could protect religion?

Dr BENNETT: No, we have not, so far as I am aware, other than submissions we have put in to the Ruddock Review. We are aware of course, as you would be, that there was the Ruddock review and now the Australian Law Reform Commission is looking into that. We do not have a large legal section that has looked into these questions [Inaudible] because we administer the Act as it is. We do look at questions that arise under that Act, but no, we have not done papers or studies into a broader protection for religion, other than the sort of things I have spoken of, bearing in mind that there have been a couple of reviews and other bodies considering those matters. We have protection for ethno-religion and we have referred to that in our submission, and of course you would be aware of that because it is in the Act.

Ms ROBYN PRESTON: My question is in relation to page 8 of your submission where you say:

ADNSW would not oppose the inclusion of religious belief as a protected attribute, but this protection should not undermine the rights of others to be protected against discrimination...

Are you saying that a bias or a preference should be towards women, LGBTIQI people and single parents over religious beliefs, if that is the case?

Dr BENNETT: No, we are not saying that.

Ms ROBYN PRESTON: Could you elaborate and explain what you mean by that statement?

Dr BENNETT: The context of freedom from discrimination, as you would be aware, and I am speaking now just on my own understanding—there are many [Inaudible]. One does not trump the other, they are independent rights, but sometimes they do intersect. We are not taking a position on that. Do not forget: We do not make determinations or decisions; we conciliate disputes between parties. We do not say that one form of discrimination is better than or more allowable than another form, so they all have a right—all bases such as these recognised bases have the right—not to be discriminated against on a ground. We administer an Act that sets out certain grounds that the basis for a discrimination complaint and if the basis of religion was brought into that, or religious belief, we would administer that Act in the same way that there are existing provisions that sometimes intersect—you know, race, disability, sex. There are bases that can intersect and we deal with those on a case by case basis between the parties.

Ms ROBYN PRESTON: Regarding that comment, what do you feel is the best way forward to include religious beliefs as a way of being considered for rights of a person?

Dr BENNETT: I am not sure that my role is to talk about the best way forward. We have put in a submission. I can, on notice, have another look at our submission and that question and see if we can provide any additional assistance to the Committee, but it is not something that I have turned my mind to and I have not prepared myself to make that observation, so I will take that on notice, if I may.

Ms ROBYN PRESTON: Yes, it was just an expansion of your comments and going forward, looking at the protection of people's rights in a range of areas, how then do you go forward with religious beliefs and look at that protection. That was my comment.

Dr BENNETT: Broadly speaking, and I have not looked at or thought about it this way, having religious belief as a basis that is treated in the same way as other grounds are treated with the same protections and exceptions and detail as the other grounds [Inaudible] but I will have a look at that on notice. It is the difference between this and the others that is of concern to us.

Mr GURMESH SINGH: I was going to ask the very same question about what you saw as a potential way forward, but I will change tack a little bit. Do you think that the ethno-religious provisions in the current bill are adequate to cover the religious beliefs?

Dr BENNETT: Of those people to whom it applies?

Mr GURMESH SINGH: Correct.

Dr BENNETT: I am not aware of any issues that have arisen before [Inaudible] suggested otherwise from those people. So far as I am aware, as a practical matter, I have not seen the problem—that is, I personally have not; I am not sure, but I can have it checked for you. We do accept that the concept of ethno-religion does have some clarity issues and we have referred, I think, to the fact that there have been some decisions made outside Australia that included specific groups as clearly within that category, but we do accept that there is a degree of lack of clarity in what constitutes ethno-religion. Sikhs and Jews I think have been found legally to be within that concept.

Mr GURMESH SINGH: That is right, but, for instance, the Islamic religion covers such a broad geographical area from Southeast Asia to the Middle East—

Dr BENNETT: Yes.

Mr GURMESH SINGH: And they are practising their religion quite differently in those areas.

Dr BENNETT: Sorry, I may have misunderstood your question. I understood that you asked whether for people who are clearly within that that has been sufficient, so that is what I answered. For the people who are clearly within that, I do not think there has been seen to be an issue that we are aware of. So far as what is not clearly an ethno-religion, yes, that is unclear and, speaking purely for myself, yes, I think there is an issue. For example, people of the Muslim faith would have more difficulty in establishing the source of the ethno part of that because it is such a broad religion across so many parts of the world.

Mr GURMESH SINGH: Could expanding or revisiting that section of the Anti-Discrimination Act [ADA] perhaps resolve some of the issues that we see with religious discrimination, in your view?

Dr BENNETT: I think we have taken the view for some time that that is one possibility that, if you wished to expand into other forms of religion, that would be [Inaudible].

Mr JIHAD DIB: Good morning, Dr Bennett. I am going to continue on with Gurmesh Singh's theme, and thanks also to Robyn Preston who spoke a little bit earlier. Has there been any exploratory work in reform? You talk about reform in your submission, I think fairly early on. Has there been any exploratory work in the ways that the ADA does need reform in relation specifically to ethno-religious protections?

Dr BENNETT: Some of these considerations may have been before my time as to looking into this, and I think there may have been bodies of advice where there have been discussions. We are a very small resourced organisation in that we have just expanded our legal "team" from one person who was not full time to now a full policy group of three people, all of whom are full time, so we have not had the opportunity, bearing in mind all the other legal aspects of the work that we do, to investigate this question—not since I have taken over; I do not know what happened before that [Inaudible]. We still only have one legal officer, so no, we have not done that inquiry. I think there has been a lot of discussion around it previously, some time ago, but I am not aware of any recently. So the short answer is no, we have not done it.

Mr JIHAD DIB: No worries, I think there has been a fair bit of discussion around that point and I think there is an acceptance that something does need to happen eventually. I am happy for you to take the next question on notice. It relates specifically to people of the Islamic faith. If there are some examples of where people of the Islamic faith have brought something to the ADA and basically there was nothing in terms of the Anti-Discrimination Act that could protect them in any way. So somebody has brought a complaint and in the end there was nothing that could be done; there was no cover.

Dr BENNETT: Thank you for the opportunity, I would have to take that on notice. I do not have that information with me.

Mr JIHAD DIB: Terrific. Also, this came from someone else's submission, but in terms of the statistics in relation to the number of complaints that were brought and were then either abandoned or withdrawn, there was about 37 per cent or so, which is quite a large number. Do we ask for a reason why people withdraw, or do they just sort of fall off the wagon?

Dr BENNETT: There are a number of answers to that, and one is I cannot give you that information, I did not come prepared with it today. I think I did have some of that information available on the previous round, looking at our particular Act. The other thing I should say is that we have a very old system. One of the things we wish to do going forward, we are just now about to get a new computer—a computer [Inaudible]—to do further investigation so that we can analyse and record why people abandon their complaints. Otherwise, to the extent of figures about that in more detail I will take that on notice.

The Hon. GREG DONNELLY: Dr Bennett, notwithstanding the current construction of the Anti-Discrimination Act in New South Wales and the fact that it does not contain a provision with respect to religious discrimination per se, are there people who contact the ADNSW and raise matters of religious discrimination thinking that the body is the body to come to to deal with such matters?

Dr BENNETT: I should know the answer to that, but I do not. I would have to go back and try to interrogate such records as we have prior to this computerisation to see if we do have records of that, so can I take that on notice?

The Hon. GREG DONNELLY: You certainly can, but in a general sense, surely as president, in terms of feedback you get from the people who take calls and complaints, there must be a sense that there are in fact, or not, as the case may be, people contacting the body and raising issues about religious discrimination.

Dr BENNETT: First, I am president, I am part-time president, but I just want to check something. I may have something here that will help as to whether or not we have that information. Just give me one second, I am just checking a document that I have here that might give me that answer. Sorry, I know we are under a time constraint.

The Hon. GREG DONNELLY: No, take your time.

Dr BENNETT: Is it in our submission? Someone did send me some notes, and I am trying to find them now, that give that information. There is such information and I cannot lay my hands on it at the moment, so I will have to take it on notice, but there is that information. We do engage regularly with the various religious organisations, or organisations that have a religious ethos, generally speaking, as to what we do, but I am afraid I have not got that information to hand.

The Hon. GREG DONNELLY: On page 7 of your submission—

Dr BENNETT: I feel I am at an exam here.

The Hon. GREG DONNELLY: I am not meaning to put you under any pressure. Page 7, section 5.2.5 and the second paragraph that commences, "The bill includes".

Dr BENNETT: Yes.

The Hon. GREG DONNELLY: I will not read the first sentence, but you go on to say in the second sentence:

As an administrative body, ADNSW would be unable to test what these are.

The CHAIR: Mr Donnelly, you have run out of time. I will allow you to complete your question. Mr Farlow has generously said Dr Bennett can use your time, but it is 9.42 a.m. and Dr Bennett has to leave in three minutes.

The Hon. GREG DONNELLY: Dr Bennett, you may wish to take this on notice, but when you say that the ADNSW would be unable to test what these are, in the context of religion being incorporated into the ADA according to the proposal or suggestion that is in your submission, the ADNSW would be in those circumstances still in a situation whereby it had to look at matters to do with doctrines, tenets, beliefs and teachings and other particular reasons to deal with matters that came before it. That would be the case, would it not?

Dr BENNETT: No, I think what this is aiming at is what our powers and resources are within our organisation. We do not make determinations and we do not have the power to require people to answer things, the power to subpoena documents or matters such as that, so we can say what people [Inaudible] general understanding. We do not make findings on what properly constitutes something, but it is very different at the moment in what is proposed because what is proposed, of course, deals with thoughts and matters such as that, and I will not go into that part of it. The fact is that it is a question of resources and in freedom of religion there is a question of conduct versus the question of belief, and what we look at is the question of conduct. They are the sorts of matters that arise in an act of discrimination: It is a conduct question rather than what people think or what their own beliefs are.

The Hon. SCOTT FARLOW: Dr Bennett, I am wondering, with the criticisms in terms of religious belief, whether Anti-Discrimination NSW has any suggestions as to what would constitute a better definition of religious belief?

Dr BENNETT: Could I take that one on notice?

The Hon. SCOTT FARLOW: You can indeed.

Dr BENNETT: If you are asking me to form a definition, I do not think I can do that on the run.

The Hon. SCOTT FARLOW: That is fine, but with the support that you have outlined with respect to encompassing some form of religious discrimination under the Anti-Discrimination Act it would be interesting to see what your view might be.

Dr BENNETT: I understand that. The difficulty for us is actually composing a definition. I understand that [Inaudible] to try to assist. We will have a look at that and see if we cannot [Inaudible]. But please bear in mind that our functions are not determinative, and that is a part of the issue. We have to work within the context of what we can do within our resource ability and also we have to be able to explain things to the public so that they understand what is and is not within the Act.

The CHAIR: Dr Bennett, thank you for your time. It is very important that we heard from you as President of the Anti-Discrimination Board. Every member except myself has addressed a question to you. You have taken a number on notice. There may be additional questions from members in writing. You are not compelled to answer those, but they will be forwarded to you. Again, I thank you for joining us today.

Dr BENNETT: Thanks, Ms Upton. I should just say I am terribly sorry about what happened at the very beginning, but the second part of this has been crystal clear and it has been easy to hear and understand. At the very beginning it was difficult for me because there were a lot of papers going over microphones, or it sounded like that to me, but I am sorry if my early part was not perhaps as responsive as it might have been in that circumstance, but thank you very much.

The CHAIR: We appreciate your time.

(The witness withdrew.)

CATHERINE LOUREY, Commissioner, Mental Health Commission of NSW, affirmed and examined

PAUL WILLIAM McKNIGHT, Acting Deputy Secretary, Law Reform and Legal Services, Department of Communities and Justice, affirmed and examined

STEPHEN BRAY, Director, Civil Justice, Vulnerable Communities and Inclusion, Policy, Reform and Legislation, Department of Communities and Justice, affirmed and examined

The CHAIR: Welcome Ms Catherine Lourey, Mr Paul McKnight and Mr Stephen Bray. I recognise that we did appreciate your time, Mr McKnight and Mr Bray, when you addressed us before with your overarching session. We are broadcast on the committee's website. I will quickly go through the format of questioning. We have a large number of members and limited time. We have been allocated an hour. My proposal is that each member, in rotating alphabetical order, will ask you a question. They will have four minutes, but we will not cut you off, just keep things moving.

Mr ALEX GREENWICH: I have two questions. My first question is to Ms Lourey. Last week the *Private Lives 3* study was released. That was funded and commissioned by the Victorian Government. It found that two out of five LGBTIQ people had contemplated suicide in the past 12 months; and it found that 57 per cent of lesbian or gay people and 77.5 per cent of trans people had been treated unfairly. Your submission talks about the impact of discrimination on mental health. There has been significant concern raised in other submissions about the impact that this bill may have on the wellbeing of the LGBTIQ community. Do you agree that legislation should not increase opportunities for discrimination against the LGBTIQ community?

Ms LOUREY: Thank you for the question. Absolutely, the commission favours legislation that lifts discrimination and that gives protections to people against discrimination, stigma and inequality. Obviously the LGBTIQ community is a community that has been well documented to experience that, as you have just cited. I think that is very much seen in the higher rates of suicide, suicide attempts, and I think this is a really serious issue and one of the reasons why the commission made its submission to the Committee to highlight that there are other consequences that are beneficial to be from a legislation that works towards not only limiting the experience of discrimination, stigma and inequality, but also we need to be mindful that it does not inadvertently provide opportunities for others—opportunities under legislation—to act in a way that could also be discriminatory and therefore have those impacts.

Mr ALEX GREENWICH: My next question is to the Department of Communities and Justice. We have heard evidence, and there are still some questions on notice to come, about the potential impacts that the proposed legislation could have on adherence to public health orders and potentially allow people to breach public health orders citing that they are a member of a religious ethos organisation or of religious belief. Do you have a position on this and, in forming your submission, did you consult with NSW Health?

Mr BRAY: Thank you for the question. No, we do not have a firm position on this. This is a question quite particular to the public health orders that we did not address specifically in our submission. The answer to the second part of your question, no we did not consult with Health in the drafting of our submission. It was not an issue that was specifically brought to our attention. I suppose I can attempt to address the question in general terms. There is a provision within the Anti-Discrimination Act section 54, which provides that nothing in the Act renders unlawful anything done by a person if it was necessary for the person to do it in order to comply with the requirement of another Act, any regulation, ordinance, by-law or other instrument, or an order of the tribunal or an order of a court.

I suppose the interaction between that section and the public health orders would be something that should be looked into. But perhaps a couple of factors which might complicate the analysis slightly is where you have a requirement in legislation for someone to comply with a particular thing, but it is caveated by a reasonable excuse. So you would have to look into the specifics of the actual public health order and the effects of this bill to determine whether or not, not complying with the order in order to not discriminate on the grounds of religion would be a reasonable excuse. Possibly the other area to analyse would be as well the power, in a case of a public health order, for instance, which is declared by the health Minister, whether the power of that Minister to make such a declaration is in any way curtailed by the prohibition on religious discrimination.

The Hon. MARK LATHAM: Ms Lourey, why did the commission feel the need to rewrite its submission—

Mr ALEX GREENWICH: Point of order: Madam Chair, you had made it very clear in the private deliberative that questions along this line were not going to be permitted. I ask that you uphold that ruling.

The CHAIR: No, I allow the question. Mr Latham?

The Hon. MARK LATHAM: It is a public statutory body; it is publicly funded, Ms Lourey. I ask why you felt that need?

Ms LOUREY: Thank you for your question, Mr Latham. As you would note, the initial submission was a public submission. The reason—

The Hon. MARK LATHAM: No, I am not noting that, it was private. I am not noting that at all; it was to be kept confidential.

Ms LOUREY: No, excuse me sir, our initial submission was public. There was then conversation in the media where we were concerned that when our submission could have been misinterpreted or facts taken out of context and misconstrued, we approached the Committee to see if it could be made private. That is the first time the commission has ever done that, so it was not taken lightly. We then further thought and we approached the Committee again and said could we amend that and they said yes. That was the path that we then followed, to then ensure that it was publicly available and we took that opportunity to ensure that the revisions in terms of nuancing our language was clearer.

The Hon. MARK LATHAM: Just to clarify, because this is new information for the Committee, your submission originally was lodged as public. Someone wrote an article in the newspaper. Could you tell us what that article was and why you felt the need to make your submission private and then to make it public, to amend it? What was the article that caused you so much concern?

Ms LOUREY: I do not have that information before me, but maybe I should have been clearer in that my comment was that there was general discussion in the public domain and we were concerned about our comments being taken out of context. The reason for that is that the commission's role is to advocate on behalf of improving the mental health and wellbeing of the community. With this particular legislation our concerns were about the opportunity that the legislation would afford to improve the mental health and wellbeing of the community. We were concerned and, therefore, as I said, we requested that it be made private. We then went back and asked could we find another way to make it public. The advice was, yes, you can withdraw, amend and resubmit and that was exactly what we did.

The CHAIR: Ms Lourey, on a point of clarification: The submission that was put to the Committee may have been submitted on the basis that it would be public.

Ms LOUREY: Yes.

The CHAIR: It was not published by this Committee. We do have the subsequent submission that now is public. I just wanted to be absolutely clear so that all members here understand what happened. They are aware of that; we discussed it this morning. I will now move to Ms Leong.

Ms JENNY LEONG: Mr McKnight and Mr Bray, I ask for comments relating to the submission we have received from the Anti-Discrimination Board NSW, which considers there could be confusion if an industrial organisation is identified or chooses to identify as a religious ethos organisation. Could you talk to the confusion around that if an industrial organisation were to identify as a religious ethos organisation. I am happy if you want to take that on notice. My other question relates to the concern that you identified in your submission on page 10 that the anti-discrimination law should specifically relate to natural persons. The Anti-Discrimination Board NSW identifies in its submission that this bill is highly unusual as it provides that organisations can hold beliefs and be protected. Could you comment on those two areas?

Mr McKNIGHT: I might start with the second part of that question.

Ms JENNY LEONG: No problem.

Mr McKNIGHT: This bill is a little unusual in the way it treats the target of discrimination, in that it calls out organisations specifically. Generally speaking, anti-discrimination provisions, in the rest of the Act for example, do not do that. It is not the case that organisations in and of themselves might not sometimes be the target of a discriminatory action, but the concept of discrimination on the grounds listed in the Act are concepts that are grounded in individuals as humans. When we look at the international law that informs this area, we are looking at a body of international law that is about trying to give people the right to express their full humanity, really grounded in human rights. Sometimes the vindication of that might be an issue for an organisation.

For example, just to pluck something out of the air, if a building supply firm refused to deal with a building company in the supply of its materials because that company was run by a woman and it had a view that women should not run building companies, that is a form of discrimination. The company might reasonably seek to vindicate that right. That really is in the context of the nature of the human right for the people in that company rather than the company itself. The concept of a religious ethos organisation and how in this bill it is imbued with

religious views of its own, particularly in the context of the State law provisions, means that the treatment of a religious ethos organisation goes a little bit beyond the way I have described the law as it might apply in a general sense. I am happy to expand a bit more on that if there is time.

Ms JENNY LEONG: I am concerned that my time buzzer has already activated. You are allowed to expand; I am just not allowed to ask a follow-up question.

Mr McKNIGHT: I imagine there will be some discussion about the State law provisions a bit further down the track. That provision really seeks to vindicate the rights of religiously informed bodies in a very fulsome way. In fact, in the way it might operate, it allows those bodies to have views about the kinds of actions and the way it might undertake State programs that might be inconsistent with the program itself. That, in a sense, seeks to give the body the ability to control the way it operates that goes a little bit beyond this concept of a human right. I think that is because the bill is purposed with carving out significant ability for bodies that identify as religious ethos organisations to do what they feel is right in their own sphere of operation.

The CHAIR: Thank you, Mr McKnight. You might want to take that in part on notice, but thank you very much.

Mr McKNIGHT: Perhaps the first part of Ms Leong's question.

Ms JENNY LEONG: I appreciate it, thank you.

Mr PAUL LYNCH: My question is to Mr McKnight and Mr Bray. The explanatory notes in this bill are unusual in respect of the way legislation is drafted in New South Wales. Does that have any concern for you?

Mr McKNIGHT: I am not sure I understand the particular points you are making in your question.

Mr PAUL LYNCH: Can I interrupt you? The explanatory note is about 15 times longer than you would normally expect. Is there a problem with that?

Mr McKNIGHT: What the explanatory note attempts to do in the case of this bill is give a very fulsome explanation of how the proponent of the bill seeks the bill to be interpreted. It provides a number of examples. What I would say is that explanatory notes, like all extraneous material when they are used in a legal context, are only accessible when there is ambiguity in the bill. The extent to which the explanatory note might govern how a court or a tribunal might interpret the bill is really a matter for that court or tribunal. There is a range of other extraneous material that might be considered in relation to ambiguity, including second reading speeches, debate speeches. Indeed, this bill calls on international instruments in particular, but there are other international instruments not named in this bill that might also be relevant as extraneous materials to interpret the law.

Mr PAUL LYNCH: The provisions about ethnoreligious that are currently in the Act are not revoked by this bill if it be legislated and they would obviously include Sikhism and Judaism. Presumably they are both also religions. Do you think that there is any potential confusion or difficulties if the bill were to be legislated, granted that you have got those competing sets of provisions?

Mr McKNIGHT: I am assuming this is the intention of the bill, particularly the exemptions in the bill are for religious ethos organisations in relation to discrimination on the ground of religion. A religious ethos organisation under this bill, so long as it is consistent with its religious tenets, is entitled to discriminate on the basis of religion. Nothing in this bill affects the provisions that relate to racial discrimination. They stand on their own. In that situation, there would be a reasonably difficult question for a tribunal if a religious ethos organisation discriminated on the basis of ethnoreligious origin. There might still be a claim for those groups under the racial discrimination provisions of the bill, yes.

Dr JOE MCGIRR: Thank you to you all for coming. My first question is to Ms Lourey. It is just a follow-on from my understanding about this issue of the publication. Madam Chair, my recollection was that the Mental Health Commission made a submission to the inquiry and it was when we asked whether we could publish it—

Ms JENNY LEONG: Point of order: I understand that Madam Chair explicitly requested that Committee members not refer to the alternative submission and now we have had one series of questions on it. It appears Dr McGirr is attempting another. It is unclear why we have changed that position from your direction and guidance. I ask you to uphold your earlier ruling.

The Hon. GREG DONNELLY: To the point of order: The question is in order for this reason: In the questioning that has already occurred on this matter a position has been put which seems to not reflect what we, the Committee, understood was the original position in regard to the submission. That fundamentally strikes out what we have been operating on as an understanding of how that submission was presented. That being the case,

it is perfectly reasonable for a Committee member to follow up to find out precisely what was the status—and indeed the varying status—of the submission before this Committee

Ms JENNY LEONG: Further to the point order—

The CHAIR: Mr Latham, did you want to make a point?

The Hon. MARK LATHAM: I am supporting the recollection of Mr Donnelly in that I raised why the public statutory authority was going to keep its submission confidential when it was put to us in the meeting we had in the Preston Stanley Room. It struck me as completely extraordinary that a public body would not publish its view on such an important issue—mental health in New South Wales. At that time, and the secretariat staff were in the room, no-one briefed us on what we have now been told by Ms Lourey today, that apparently there was a public permission to go forward. Ms Lourey saw something in the public discussion—we do not exactly know what—and then a request was made to make it confidential. I raised it at the Committee meeting. We said you can publish something and they published what Ms Leong calls—

Ms JENNY LEONG: Further to the point of order—

The CHAIR: Thank you Mr Latham. Have you completed—

The Hon. MARK LATHAM: Now you cannot make a mockery of the process of a parliamentary committee.

The CHAIR: I am conscious of the time. Order! Mr Latham, will you complete what you want to say relating to this point of order quickly so we can move forward to the witness hearings.

The Hon. MARK LATHAM: I just did.

The CHAIR: Ms Leong?

Ms JENNY LEONG: I do not think that this can be dealt with adequately in the context of the public hearing, given that the discussions we are talking about, to my understanding, happened within meetings of the Committee which were confidential discussions of the Committee. In discussing these points of order, members of the Committee are providing details which may or may not be factually correct. But at the same time it seems hugely problematic that we are dealing with what are confidential deliberations of the Committee in a public hearing in the middle of a session. I request that you uphold your original order that we do not continue questioning along these lines or, if we are going to continue questioning along these lines, that we move into a confidential session so we can have an open discussion rather than talking in code and basically confusing everybody about what is going on.

Dr JOE MCGIRR: Madam Chair, may I make a comment?

The CHAIR: You can. I just caution members that we are here to hear from the witnesses.

Dr JOE MCGIRR: I simply wanted to clarify. This morning Ms Lourey said that the original submission from the Mental Health Commission was a public submission. I simply wanted to check with her because my recollection was that the original submission to the Committee was to the Committee. We then were deciding whether to publish but we asked whether people wanted them published. It was at that point that the Mental Health Commission said that it would not want its submission published. That was my recollection of what happened. I am happy for you to take it on notice and go over the events. That is all I wanted to do. I have another question.

The CHAIR: I will allow the question. I reiterate that there was a submission that you made. It would have been published. As a courtesy the Committee asked you whether it should be published. The response was no. This Committee has kept your original submission confidential to the Committee. I see no problem in having questioning by members, not about the substance of that first submission but the process that I have just referred to. On that basis, I allow the question to stand. Ms Lourey, we are at time. You can take it on notice or you can have a short period to answer that.

Ms LOUREY: I will take that on notice; that might be quicker. But I do want to say that when we did our initial submission, it was with the intention that it would be published.

Dr JOE MCGIRR: That is very good; that is what I wanted to clarify. Am I able to ask another question, given that most of my time was taken up with a point of order?

The CHAIR: We will give you one minute.

The Hon. GREG DONNELLY: I am prepared to surrender some time to the member.

Dr JOE McGIRR: Perhaps I can just ask it and it can be taken on notice. My question relates to this issue in 22Z of religious ethos organisations contracting for work. The concern that has been raised by a number of witnesses is that organisations will be allowed to somehow win contracts and not undertake work that is required in those contracts. For instance, if there is a contract to provide termination of pregnancy services, if somehow a religious ethos organisation would win that contract and be allowed to not do that. I would like clarification. If there is a contract process or an expression of interest or a tender process for services and it requires the provision of services such as termination of pregnancy that might be contrary to a view and the organisation clearly will not be able to deliver those services, the Government would be well within its rights simply to not award the contract on the basis that the basic service would not be performed and would not be subject to a claim for discrimination. It is an inherent requirement of the contract; that is what I am driving at.

Mr McKNIGHT: If section 22Z merely had subsection (1) in it, there might be a question of indirect discrimination and the reasonableness of the requirement in the contract that could be put in the balance. But subsection (2) glosses that and means that in the awarding of a government contract, in some sense the religious positions of the religious ethos organisations have to be respected. Just how that plays out in practice is not completely clear on the face of the bill and would require quite a lot of interpretative work by the tribunal. Given that the section has a particular focus on the use of property, when we were thinking about it, we thought about an example where the Government was undertaking a grants program to community organisations to build community halls and community facilities. As a condition of that grants program it said, "You can build your community facility with this money. That is great. When you are using it, you have the absolute right to use it. When you are not using it, because this is public funds, you need to make that community facility available to other public groups for hire." I can think about a grants program that might work like that.

If a religious ethos organisation came to government and said, "We want these funds but either at the outset we cannot agree to that condition on a blanket basis because we do not, for example, want to hire out our facilities to people with a fundamental belief system that is different from our own", or, "We don't want to hire out our hall because we want to use the hall for worship. For us, having people in the hall who are not our religion would somehow defile the hall and therefore we cannot rent it out", I am not sure whether the Government would be able to say to the organisation, "No, that is not an acceptable position for you to take under subsection (2)." I think there is some uncertainty about that. I also think if the organisation took the money and did not reveal that and down the track sought to exclude bodies inconsistent with the general provision and the Government sought to take the money back, there would be arguments about whether subsection (2) required the Government to respect the religious ethos organisation's positions on those questions.

Dr JOE McGIRR: You are saying the section would basically mean the Government would have to respect the organisation's views in that respect.

Mr McKNIGHT: I think there is a very strong argument that it would, yes.

Dr JOE McGIRR: I think that is what it is designed to do. That is in relation to property—

Mr McKNIGHT: To that point, the question about whether the purpose of the contract itself is affected by this provision, that is a very difficult line to draw. It is not immediately clear whether the Government could operate in that way or not. For example, if the Government wanted to run a community program to provide outreach services to the Hindu community, can it do that consistently with this provision? It is not clear to me.

Ms TANIA MIHAILUK: Presumably, Mr McKnight, what you have just said is the case now anyway, in the context of the last point that you made about the Hindu.

Mr McKNIGHT: I do not understand the question, sorry.

Ms TANIA MIHAILUK: I assume that the qualifications you have made now with respect to this bill and some of the restrictions around grants, some of that applies now, except that perhaps it has not been tested. We are giving out grants now. Clearly those organisations are making decisions on who they will provide access to in respect of their facilities, even though they might be relying on government grants.

Mr McKNIGHT: I am positing a hypothetical program. I am not sure that such a program exists. There are lots of State funding programs out there that all have different kinds of—

Ms TANIA MIHAILUK: A good one is the Community Building Partnership program where members of Parliament regularly provide funding, together with the Department of Premier and Cabinet where a lot of religious organisations receive funding. I am sure we have no further role in determining whether they provide access to groups other than members of their own religious organisation.

Mr McKNIGHT: Indeed. The law as it stands does not have a provision such as section 22Z in it so there are not the same restrictions on the way the Government administers its programs at the moment.

Ms TANIA MIHAILUK: I do not think it has been tested right now whether or not those organisations discriminate. That is the point that I am making. I will leave that—

Mr McKNIGHT: There are two layers of discrimination that you are referring to there. One is the potential for the State to be discriminating in the way it hands out money. At the moment that is not governed by the Anti-Discrimination Act.

Ms TANIA MIHAILUK: Correct.

Mr McKNIGHT: The second is whether the community organisation is discriminating against other kinds of groups when it allows access to its goods and services. That is a different action and might be the subject of a complaint of discrimination under the existing ADA if a religious organisation, for example, refused access to community facilities based on the sex of the people who wanted to use the community. For example, if it did not want to provide access to men that would be considered under that rubric. Under that rubric, the question is: Is there direct discrimination? If there is direct discrimination, is the particular community group protected by section 56, which allows particular protections to bodies that are established to propagate religion.

The same analysis would apply to the way that community organisation operates in respect of grounds that are not religion if this bill were to be passed. This bill is principally about discrimination on the basis of religion. The question of whether you could put those sorts of requirements into the Government contract though would be a different question. There is a level of complexity there once you layer this provision on top of the existing law.

Ms ROBYN PRESTON: Welcome ladies and gentlemen. My first question draws on the comments from Mr Greenwich, who said that two of five LGBTIQ people had contemplated suicide. That is currently the situation. My question is to Ms Lourey. Do you have any evidence that supports the notion that suicide rates will increase should the amendment be successful?

Ms LOUREY: No, I do not.

Ms ROBYN PRESTON: I draw your attention to page 11 of your submission and wish to ask about that. It relates to section 22Z and to State laws and programs.

Ms JENNY LEONG: It is only a three-page submission I believe.

Ms ROBYN PRESTON: In the first paragraph you raise significant concerns about provisions regarding State laws and programs. For example, there are current COVID-19 restrictions. What are your thoughts if people were unable to attend places of public worship? Could I have your comments on whether these restrictions could be overriding any public health Acts?

Mr BRAY: Sorry, could I just clarify which part of our submission you are referring to?

Ms ROBYN PRESTON: It is a comment in general that has been made about a submission. What your thoughts are on that?

Ms JENNY LEONG: Point of order: My understanding is that it is the usual practice of the Committee, if a member wants to ask witnesses to provide comment on another submission, to provide details of what the submission says either by reading it out or by providing a copy of the submissions so that witnesses are able to respond. It is unclear whether Ms Preston has done that or whether she is talking in general terms. I ask her to clarify whether she is asking a question based on her opinion, or whether she is going to refer to a submission?

Ms ROBYN PRESTON: I am happy to—

The CHAIR: Order! Ms Leong, it was clear. Ms Preston, in reframing her question, was asking the question generally. I will allow the question. If you want to take it on notice, you can Mr Bray, of course.

Mr BRAY: Yes. Can I clarify? Is the question whether or not the private member's bill as introduced would somehow interfere with the existing public health orders?

Ms ROBYN PRESTON: Yes, it is.

Mr BRAY: I think I will have to refer to my earlier answer. The answer is the same. That would have to be a question that is assessed in close examination of the particular public health order. You would have to look at the provisions of section 54 of the Anti-Discrimination Act but, in addition, consider whether or not the reasonable excuse exemption to those offences applied and, in addition, whether the private member's bill could be interpreted in any way as curtailing the ability of the Minister to make those orders.

Ms ROBYN PRESTON: Thank you Mr Bray, I appreciate that.

The CHAIR: Ms Preston, you have one minute to go.

Ms ROBYN PRESTON: I am fine.

The CHAIR: We will move to Mr Singh.

Mr GURMESH SINGH: Many of the other submissions have eluded to the fact that they see provisions for discrimination against religion as important, whether or not they agreed or disagreed with this bill. As leaders of your organisations, what are your views on whether that is required or necessary; that is, the protection of religious freedom from discrimination?

Mr McKNIGHT: I should clarify that today we are appearing as departmental officials and we are not in a position to talk about government policy. I think the desirability or otherwise of religious discrimination provisions is a matter of policy that we cannot address in those terms in our appearance. We are happy to answer factual questions though that go to that question, if you would like to ask one.

Mr GURMESH SINGH: No, it is fine. I am happy to seed the rest of my time to Mr Donnelly.

The CHAIR: Mr Dib?

Mr JIHAD DIB: Thank you and good morning. On page 8 of the Department of Community Justice submission there is a reference at paragraph 3.2 to section 93Z which is potentially one of the things that could make a change. Have there been many cases of 93Z being used since it came into being a couple of years ago?

Mr McKNIGHT: We are not aware of any.

Mr JIHAD DIB: Also, on that page there is a reference to ethnoreligious origin. About halfway down, paragraph 3.1 states:

Ethno-religious origin has been interpreted by the Tribunal to only include some religious groups, such as Jewish people and Sikhs, where there is a strong association between group's nationality or ethnicity, culture, history and their religious beliefs and practices. Decisions of the Tribunal have found that Muslims are not an ethno-religious group, on the basis that they do not share a common racial, national or ethnic origin. However, it has been accepted that Middle Eastern Muslim is a race within the definition of ethno-religious origin.

That to me shows that the ADA is missing something in its interpretation of ethnoreligious. On the one hand it says that Sikhs and Jews would be considered ethnoreligious, but that would be it. Yet in another statement there has been an acceptance of "ethnoreligious" as being the Muslim community. Has there been any discussion about the way in which the ADA should include religion or ethnoreligious groups in the definitions at this point?

Mr McKNIGHT: What the passage in the submission really does say is that that consideration of who is included in the definition of "ethnoreligious" is fact specific. The tribunal has taken a flexible approach to that issue. For some groups perhaps the question is clearer than others but, in the case of the Muslim community, the tribunal has from time to time recognised subsets of the Muslim community as being ethnoreligious. That has been a fact-specific determination in the particular case. That points out how ethnoreligious group as a concept works on the ground.

Mr JIHAD DIB: If you cannot define it as an ethnoreligious group the religious coverage would do it. We have heard from different panel members previously where that sense of confusion is creating a problem. I make one point on an issue that Ms Mihailuk was discussing. There is a good example of funding in my electorate where a church group received some funding to upgrade a kitchen through the Community Building Partnership grants. It allows all community groups, regardless of their faith, to use that kitchen. This idea that groups will not allow people to use their facilities through the Community Building Partnership grants is probably a little far-fetched.

Mr McKNIGHT: Indeed. My answer was very much a hypothetical situation, not casting aspersions on any community groups out there at all.

Ms JENNY LEONG: Point of order: I did not want to interrupt Mr Dib but it is important to note that Dr McGirr said, in response to that answer from the witness, "That is what it is designed to do." I do not think it is particularly far-fetched. I do not want to open the debate but it is important to recognise that not—

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

The CHAIR: Order! I do not think that is a point of order. We will proceed. I am going to Mr Farlow.

Mr JIHAD DIB: To the point of order: It was not to the panellist member; it is to everybody. I see it every day. People do share it.

The CHAIR: Mr Dib, we are moving now to Mr Farlow.

The Hon. SCOTT FARLOW: I return to the old chestnut of the public health order and I take the answer you have given. With respect to those factors that you outlined that needed to be considered, in your view, if the bill before us was implemented, is there anything that would provide a barrier to a public health order being issued that would explicitly limit the number of people who could congregate?

Mr BRAY: It is quite difficult to talk in hypotheticals without seeing the public health order and examining the interaction in detail.

The Hon. SCOTT FARLOW: Yes, but I am saying in a hypothetical public health order that public health order could cure any deficiency that could possibly be there. For instance, that public health order could specify that it was not bound by the operation of the Anti-Discrimination Act or a specific provision of the Anti-Discrimination Act. Would that be correct?

Mr BRAY: Perhaps one relevant factor is the factor I eluded to earlier—whether or not the ability for the Minister to make the public health order itself was curtailed by the provisions of the private member's bill. In that regard I refer you to a High Court case of *Waters v Public Transport Corporation* (1991) HCA 49, the Victorian Minister for Transport directed the Public Transport Corporation to adopt a new ticketing regime, which it was alleged discriminated against disabled people on the basis that it reduced accessibility. It was argued in that case that the actions of the corporation to comply with the Minister's direction were necessary to comply with the requirement of that direction.

Therefore, it was under the equivalent of section 54 of our Anti-Discrimination Act, which was the old section 39E of the Equal Opportunity Act 1984 of Victoria. In that case the High Court found that that particular section—which I could characterise as a defence—was not applicable but they did so for different reasons. Some of the members of the High Court found that there was some discretion for the corporation to follow or not to follow the Minister's direction, whereas other members found that the provisions of the Equal Opportunity Act curtailed the ability for the Minister to make those directions. That particular issue would need to be examined.

The Hon. SCOTT FARLOW: With respect to the point that was raised it was unclear as to whether the Government could do outreach services to the Hindu community. I take it that when you were saying that you meant under the bill as proposed rather than under the current legislative regime. Is that correct?

Mr McKNIGHT: That is right, under the provisions of section 22Z, whether a State program that really targeted a particular community group such as the Hindu community could be maintained under the provisions of section 22Z (2).

The Hon. SCOTT FARLOW: Could you explain further why that is the case?

Mr McKNIGHT: Yes. That requires that the Government respect the religious ethos views of organisations that come to it to contract with it. If that religious organisation, for example, had views about the way in which it might deliver that service or the particular groups it is asked to service based on its religious ethos, under the provisions of that section the Government may need to disregard those in the context of awarding the contract. To a certain extent it is a rather difficult conceptual question for us to get our heads around. I find it a little difficult to clarify what that subsection would do on the ground. But I think it might affect the ability of the Government to contract in those circumstances.

The Hon. SCOTT FARLOW: So effectively, rather than for the organisation, that the Government would preclude itself from providing grants in such circumstances?

Mr McKNIGHT: The provision is directed at government, in that the discriminator in this situation is the Government in the administration of State law and programs.

The CHAIR: I have a question but we are running close to time, so I will take up the remaining time. I note that it is 10.43 and we will release you all at 10.45. I note that there are no page numbers in the department's submission, so it is section 5. I was interested in what you might be alluding to there. The way that this bill is cast is that it does not include activities that would be an offence punishable by imprisonment under the law of New South Wales or the Commonwealth. Will you explain a little more about the comment that then says, "This may include conduct that contravenes existing provisions of the ADA, such as discrimination or vilification." What actions are you referring to there that would fall outside the provisions that would be inserted into the bill or into the law by virtue of this bill? You can take it on notice if you like. What are you referring to when you say, "such as discrimination"? I understand the vilification point. What would be excluded from the Act that we are now seeking to amend with this bill? What aspects of discrimination would not be subject to the bill's new provisions?

Mr McKNIGHT: The vilification provisions are I guess some of the ones that the submissions have referred to as being unlawful acts.

The CHAIR: They are civil ones, are they not?

Mr McKNIGHT: They are civil yes.

The CHAIR: But you are saying they may be outside this new part of the bill that would come inside the Act. So even though they are not criminal they might somehow?

Mr McKNIGHT: Yes. It is of particular relevance in the area where you are talking about protected activity. These are activities that, say, employees undertake in their private capacity outside work hours that involve religious beliefs or activities. It is quite a complicated provision in the way that it operates. An employer might have generally applicable codes of conduct, for example, that require respectful actions in the workplace. That might include reference to vilification, for example. Once an employee is outside the workplace, as fairly narrowly described in the bill, if their statements are religiously motivated, that becomes protected activity. Vilifying statements that an employer might not allow in the workplace but yet might affect workplace operations, so they might make quite direct racial slurs. I cannot imagine a religion where that would be consistent with the tenets but let us imagine a hypothetical religion of that nature. If the employee makes racial slurs outside of the workplace about a workmate that would be potentially protected activity—

The Hon. MARK LATHAM: That is not true. That is a misrepresentation.

Ms JENNY LEONG: Point of order—

The CHAIR: Order! Mr Latham, I will have silence and no interjections. This is my question time.

Ms JENNY LEONG: Point of order: I ask you to ask Mr Latham to withdraw that offensive remark to the witness.

The CHAIR: Mr McKnight, would you like to proceed?

Mr McKNIGHT: That might be something that, generally speaking, is unlawful in that it is discrimination or it is vilifying, but yet it falls within protected activity. It does not mean that that action is not civilly actionable vilification under the Act; it still would be. We would be in a position where the speaker might be liable for vilifying actions in a civil action under NSW Civil and Administrative Tribunal but also be protected from employment actions under the protected activity provisions in the bill.

The CHAIR: Gentlemen and Ms Lourey, I bring the hearing to a close. I thank you very much for your time and for your thoughtful submissions, in particular, the Department of Community and Justice. I thank you both for taking on board hypotheticals which, I understand, take a certain amount of dexterity on the spot. I also thank you for your support through the earlier briefing. Ms Lourey, thank you very much. We will close the hearing.

(The witnesses withdrew.)

(Short adjournment)

MILOMIR ANDJELKOVIC, Adviser to Bishop Siluan, Bishop of the Metropolitane of Australia and New Zealand, Serbian Orthodox Church, sworn and examined

CON KAFATARIS, President and Founder, Australian Christian Alliance, sworn and examined

PATRICK QUIRK, Associate Professor, St Thomas More Law School, Australian Catholic University, before the Committee via videoconference, sworn and examined

The CHAIR: Welcome gentlemen. It is good to have you here with us today. We will now resume the broadcast. I welcome our third panel of witnesses today, Dr Con Kafataris, President and Founder, Australian Christian Alliance. We also have here with us—and thank you for joining us in person—Mr Milomir Andjelkovic, Adviser to Bishop Siluan, Bishop of Metropolitane of Australia and New Zealand, Serbian Orthodox Church. We have Dr Patrick Quirk, Associate Professor, St Thomas More Law School, Australian Catholic University. Dr Quirk are you available?

Dr QUIRK: I am available. Can you hear me?

The CHAIR: We can—very good, thank you so much. We appreciate that. Thank you very much again for coming along today. I want to introduce you to the members of our Committee. My name is Gabrielle Upton and I am the Chair of the Committee. Mr Paul Lynch is our Deputy Chair and member for Liverpool; the Hon. Catherine Cusack is on Webex and is a member of the Legislative Council; Mr Jihad Dib is the member for Lakemba; the Hon. Greg Donnelly is a member of the Legislative Council; the Hon. Scott Farlow is a member of the Legislative Council; and the Hon. Sam Faraway is member of the Legislative Council. Mr Alex Greenwich, the member for Sydney, is absent at the moment but I am sure he will soon be joining us. The Hon. Mark Latham is a member of the Legislative Council and is also joining us by Webex. We also have Ms Jenny Leong, member for Newtown, Dr Joe McGirr, member for Wagga Wagga, Ms Tania Mihailuk, member for Bankstown, Ms Robyn Preston, member for Hawkesbury and Mr Gurmeh Singh, member for Coffs Harbour.

As you can see, we have a large Committee. The way we will run proceedings today is that there will be no statements and we will go straight to questions. According to the alphabetical order that we have been rotating through, members will have four minutes for a question and an answer from you. If we go a little bit over four minutes, that is not a problem but we will try to keep time if we can. We may end up with some time at the end where members can ask follow-up questions. Do you have any questions about the questions and answers?

Mr ANDJELKOVIC: No.

Dr KAFATARIS: I am good.

The CHAIR: We move to our first question from Mr Latham.

The Hon. MARK LATHAM: Thank you very much to the witnesses and for the work they do in this space. Earlier today we heard from the president of the NSW Anti-Discrimination Board and we looked at the submission where there is a complaint that we are making through Dr Bennett about the private member's bill. It states on page 7:

There is no requirement that the beliefs accord with the current, accepted or mainstream beliefs of the religion meaning that archaic and outdated interpretations of religious texts could be used.

My question is to each of the witnesses: How would you like to have an anti-discrimination board in New South Wales commenting on legislation where it seems to be thinking it has the power to decide what is an acceptable or mainstream religious belief and what is so-called archaic and outdated interpretation of religious text would be ruled out in respect of protection from religious discrimination?

Dr KAFATARIS: That is an interesting question. Can I just clarify exactly what is being asked so I make sure that I answer it properly?

The Hon. MARK LATHAM: My bill defines "religious belief" as things that people genuinely believe in. The suggestion from the Anti-Discrimination Board is there would be two categories of religious belief genuinely believed in. One is those that the board itself regards as acceptable or mainstream and a second category is apparently unacceptable because they reflect archaic and outdated interpretations of religious text. I suppose they are talking about books like the *Bible*.

Dr KAFATARIS: There are a couple of things I will say to that. Firstly, belief and religion are not an attribute such as race, or disability, or sex. It is not something that is externally obvious or self-evident as I would call it. It is not based on immutable factors. It is based on ideas at the end of the day. Ideas are, by definition, individual. Who defines whether you have this belief? Just because I think your belief is unreasonable, does that

mean that I have the right to say that you cannot have that belief? I would argue that that is not reasonableness. By definition religion has to be defined using some kind of criterion that is personal to the believer, because that is their belief. If you start to say that a certain text or a certain view or a certain religious belief is archaic or outdated and it is not mainstream, then you are getting to an area where courts and tribunals are deciding matters of doctrine. I know other more learned people have addressed that better than I do.

Take the example of Islam. Shia is a minority, for want of a better word. Sufi is a minority. The Sunni are the majority. Does that mean that Sufi doctrine is not to be accepted if it conflicts with the majority? In Christianity there are smaller sects. For instance, the Seventh-day Adventists are not a majority. Catholicism and the protestant churches outnumber those. Does that mean that those beliefs should not be protected? I would say no. I think the definition of a belief has to be based on the fact that it is genuinely held by the believer. We can argue whether it is correct or not; that is different. I do not think you can say that something is not genuine based on what you think that someone else believes.

The Hon. MARK LATHAM: Thank you, that is very useful.

Ms JENNY LEONG: I wish to follow on from Mr Latham's questioning. We would probably all agree that slavery is one element that is identified in the *Bible* that could commonly be accepted as something that is both archaic and outdated. Is it your belief that because slavery is referred to and is accepted in elements of the *Bible* that this gives religious ethos organisations and people who hold religious beliefs the right to be able to own slaves?

Dr KAFATARIS: I would like to come back to that and provide a more detailed rebuttal. But I will give you a couple of points. I will take that on notice, but I will make a couple of points. There is a very good book by a man named Paul Copan that goes into this. The question I would ask is: What do you mean by slavery? There are many theological experts that show that even the Hebrew word for slave also means servant. The way that the Old Testament Hebrews handled their servants was a little bit like employees today. There were a stack of codes in Leviticus and the Old Testament that said how you were supposed to treat your servant, how they had rights, how you were not supposed to mistreat them and all those sorts of things. I do not think it is quite as simple as what is being portrayed by people that take that view. But, as I said, I am happy to provide a more detailed rebuttal—no, let me rephrase that.

Ms JENNY LEONG: A response even. It was a question. We are not debating things here.

Dr KAFATARIS: A more detailed answer; apologies for that. I withdraw that word. I like to be very precise in my words, as you can see. I will provide a more detailed answer to that on notice but I would like to say that it is not as simple as saying that the Old Testament condones slavery; it does not condone slavery as we would know it in the American South or the Antebellum South.

Ms JENNY LEONG: I will ask all of the witnesses as I appreciate that time is short. I will ask the question and perhaps you will all have time to respond. There are questions around the intersection of this proposed bill and the already existing protected attributes in the Anti-Discrimination Act. Do you support religious ethos organisations being able to discriminate against people on the basis of their race, sex, gender, disability or other existing protected actions, given that this bill seeks to add a primacy to the protection of religious freedoms by articulating in the start of the bill reference to 18 (3) of the International Covenant on Civil and Political Rights [ICCPR] specifically around religious freedoms? I am happy to take a response from you all. I know time is limited, but I wanted to put that question to each of you.

Dr KAFATARIS: I will defer to Professor Quirk; I will not dominate.

Dr QUIRK: Thank you for the question. I think it is beyond what I can answer, given the parameters of my submission. To launch into something now would be beyond what I was prepared for, so I might take it on notice, if I could be of help. But at the moment I do not have anything to assist.

Ms JENNY LEONG: I ask Dr Quirk a follow-up question relating to your submission. If "A person is protected against discrimination based on their religious belief" was inserted as another protected attribute in the Anti-Discrimination Act rather than in the form that this bill seeks to do, would you be supportive of that action being taken by the Government?

Dr QUIRK: The purpose of my submission was to open a pathway to have a look at some aspects of conscious protection in a civil law jurisdiction, namely Germany, which I think is much neglected. But to answer your question I would need to go away and do a great deal of research. I am sorry.

Ms JENNY LEONG: No problem. I might direct it to the other witnesses then.

Dr KAFATARIS: I am happy to speak to that. This is my view: I do not believe that an organisation making a distinction between who it hires and who it provides services to and how it provides those services is always discrimination. We have the example of political parties. Political parties are not forced to accept members whose views contradict those of the party. Political parties are not forced to hand out how-to-vote cards for their opponents. A religious organisation, provided it can clearly show proof that it is a religious ethos organisation, making a distinction between who it hires and the services it provides and how it provides them, I do not believe that is discrimination. Discrimination is when you treat people unequally who should otherwise be treated equally. A Jewish hospital, a Muslim nursing home or a Catholic school wanting to provide services to their communities and preferring to employ people who hold the same views I do not believe is discrimination.

Mr ANDJELKOVIC: Thank you for the question. Firstly, I offer the apologies of His Grace Siluan who is unable to attend today. I am here on behalf of Bishop Siluan, who is tied up with ecclesiastical duties. Today is our patron saint's day, St George. It is my family patron saint's day, so I am here today instead of being at church to worship.

Ms JENNY LEONG: Thank you for being here. That is a sacrifice which I acknowledge.

Mr ANDJELKOVIC: Thank you. As per the letter of authority that I believe all the members have received, any technical questions I can defer to Dr Kafataris, which I believe he has answered. Also if I could ask, Madam Chair, to have an opening statement letter handed out to all members, which is a little bit of information about me and why I am here. Is that acceptable?

The CHAIR: Yes, we will circulate it to the Committee. I am conscious of the time. I will move to the next member to ask questions.

Mr ANDJELKOVIC: That is fine. I do not want it read out; I just want it circulated.

The CHAIR: We will ensure it is circulated. Thank you for that very much. Our next member of the Committee is Mr Lynch.

Mr PAUL LYNCH: Mr Andjelkovic, one of the submissions the Committee has received requested an expansion of section 22K of the bill so that companies that produce or process food and obtain Halal certification are protected against anti-Halal movements and the discrimination that goes with it. Do you have a view on that?

Mr ANDJELKOVIC: That would be a technical question. I defer that to Dr Kafataris as per Bishop Siluan's instructions.

Dr KAFATARIS: Can I ask you to clarify your question?

Ms JENNY LEONG: Point of order: I wish to clarify and ensure the witnesses are aware that they are also able to take these comments on notice, recognising the specific clashes with other commitments and duties.

Mr PAUL LYNCH: I am perfectly relaxed if you take it on notice.

Mr ANDJELKOVIC: I can take that question on notice.

Mr PAUL LYNCH: Dr Quirk, from your submission it seems to me you want to do more than just remove discrimination on the grounds of religion; you want to have a positive religious freedom guarantee. You refer to other jurisdictions where that is being done. In those jurisdictions are there other characteristics that are also subject to explicit protection?

Dr QUIRK: Yes. If you are referring to the articles that I wrote, I guess there are many protections inside, for example, the German constitution, but a very comprehensive set of human rights, certainly.

Mr PAUL LYNCH: Effectively you are arguing for a bill of rights or a charter of rights in this jurisdiction?

Dr QUIRK: No, I would not go that far. What I am essentially trying to offer to the Committee is a way into a foreign civil jurisdiction that is very rarely considered, namely Germany. We get a lot of information from other common law jurisdictions such as the United States and Great Britain. I think it is going to be very helpful to look at civil law jurisdictions that are not done at an international level, for example, the European Union, but are done at a domestic level because that is where you have to get into the weeds on particular issues. The purpose of the submission really was to argue that comparisons can be useful. I have given a lot of examples, although it is still a small corner of the universe, that one encounters in Germany. I would also hedge that as well by saying that comparisons can be dangerous. They can be useful in process; they can provide a kind of precedent if you are looking for one, but they can also emerge out of very different circumstances, so you have to be careful in adopting them.

Mr PAUL LYNCH: But effectively you are saying we take one right from another civil jurisdiction and ignore all the others?

Dr QUIRK: Absolutely not.

Dr JOE McGIRR: Thank you to all the witnesses for appearing today. My first question is to Dr Quirk. Are there any improvements to the proposed bill that you would suggest relating to the issue of conscientious objection that you have raised?

Dr QUIRK: I tried not to comment specifically on sections of the bill, but I did circulate a two-page summary of one of the articles that I wrote. On the second page there is an interesting and helpful list that was set out by Dr Eskenazi, who is a leading German constitutionalist. You will see them at the top of the page there. It is the marks of a potentially legitimate conscientious claim or an exemption claim and different things as you will see in the article. Perhaps some attention to those could be of assistance, but I would not like to take it any further in terms of specific changes to the bill that is there. I do not have that prepared.

But if you look at those you will see there is a question of necessity, of gravity, of unconditionality—a situation where the moral obligation of the person making the claim feels that their moral identity is at stake—a willingness to perform substitute service. That comes up in interesting ways under the German constitution because there is a requirement of military service, although that is in abeyance at the moment under the federal regulation. Then the last one is perhaps also of interest, that one can recognise the genuine conscience claim by its effects. Those are recommenders, perhaps principles, but I do not have any specific changes that I would recommend to the legislation. That is not an approval one way or the other.

Dr JOE McGIRR: If I could ask you then to reflect further on that and if you can think of any other improvements in respect of the specific legislation. This is an important element to consider.

Dr QUIRK: Sure.

Dr JOE McGIRR: Dr Kafataris, in your submission you highlighted the importance of institutions and I refer to the second page of your submission, "The importance of an institution." It is an issue that has been raised with the Committee before, that there is some uniqueness around the fact that institutions and organisations are recognised. Will you comment on the importance of that?

Dr KAFATARIS: I will speak specifically from the perspective of religious institutions because that is what the bill is about, or at least it is about religious discrimination. A religious believer does not just live their life in isolation and does not just live their life in private. There are three levels. They have their beliefs that guide their thoughts and their actions in private. But then they live those beliefs in a community and that community forms an institution. The institution is made up of individuals so without the individuals the institution does not exist.

But by the same token the institution strengthens the individuals—the believer who goes to the church, to the mosque, to the synagogue, to the temple. Their lives are affected in a positive way—that is the idea anyway and so one needs the other. With some religions, not all but certainly with Christianity, we are called to live our lives in the public square. Jesus himself said in Matthew 5:16 "Let your light shine before men, that they may see your good works, and glorify your Father which is in heaven." Religion is not just happening inside the four walls of the church. The institution is important—I would argue just as important in many ways as the individual.

Mr ANDJELKOVIC: If I can add to that, we have had this discussion with Bishop Siluan who basically states that for religious practice for a Serbian Orthodox Christian, it is an intrinsic part of personal, family and communal life. It goes far beyond the liturgical setting. Attending our churches, our other organisations, everything. We have a calendar which sets out all our saints' days and everything throughout the year. There is a certain part of worship in our faith every day of the year, every day of our life.

Dr JOE McGIRR: Thank you very much.

Ms TANIA MIHAILUK: This question is to both Mr Andjelkovic and Dr Kafataris. The Australian Christian Alliance [ACA] submission states that many of your supporters have been persecuted on the basis of their faith and are concerned as to their rights to live and raise their children according to their faith. Will you expand upon the type of discrimination and persecution your supporters are facing?

Dr KAFATARIS: I will answer that several ways. Firstly, a lot of the people that we represent, their cases are similar to what is in this book. No doubt people have seen this book from the Human Rights Law Alliance. It has a number of cases of people who have been dragged before tribunals or had some kind of adverse legal action because of their faith. Many people just take it and do not bother making a fuss about it because for them the process is the punishment. That is an important point to make. Even if you win a discrimination case,

such as the Archbishop Porteous case that is in here, you have still got to go through that process of being dragged before a court and no-one wants that. A bishop said to me very clearly, "We do not want to spend our time, our talents and our money in courts. We want to spend that in our communities." Some other people say things such as, "We left the Middle East because we were not able to practise our faith there. We were persecuted for our faith. But the same persecution has followed us here, except now we are not being persecuted by the sword; we are being persecuted by the law." That goes to that phrase: It has gone from warfare to lawfare.

Because for many of the people that the ACA represents English is a second language, you are probably not going to see them being involved in a lot in court cases because they do not feel comfortable talking about it. That does not mean it does not exist and that does not mean that it is not an issue. That was one of the reasons why we saw such big swings in western Sydney during the last Federal election. They were scared about their religious freedom, particularly after cases such as Israel Folau. Many people were saying, "Gee, if it can happen to him, it can happen to me." I hope that answers your question.

Ms TANIA MIHAILUK: The ACA is based in western Sydney?

Dr KAFATARIS: Yes, but we do not just purely represent people in western Sydney. There is also something I want to raise that happened to me. I will not go into detail but I was asked to assess somebody as part of my job. I do medico-legal medicine. The patient wrote back and said:

I am also curious to understand how Dr Kafataris, a member of the Australian Christian Alliance, ACA, was selected to conduct the review given his public views.

He then goes on to mention my views as a Christian and says:

Given that our case is one that involves openly homosexual men, I ask was it appropriate for him to be contracted to review my file, given his publicly stated position.

My professionalism was called into question purely because of views that I articulated completely away from my medical field.

Ms JENNY LEONG: Point of order: Given this is a public hearing, I want to clarify whether consent was given from that individual for that correspondence to be read on the public record.

Ms TANIA MIHAILUK: He did not name the person.

Dr KAFATARIS: I have not named anybody.

Ms JENNY LEONG: I did not request whether or not the name was mentioned; I asked whether consent was given from that individual to read that private correspondence onto the public record.

The CHAIR: One member at a time. Dr Kafataris.

Dr KAFATARIS: Let me retract the last paragraph.

The Hon. SCOTT FARLOW: To the point of order: Dr Kafataris has outlined his own personal experience. He has not adversely mentioned anyone. I think Dr Kafataris' evidence should stand.

Ms JENNY LEONG: Further to the point of order: It is obviously up to the doctor. What I am suggesting is that it appeared to be that in providing a response a piece of correspondence was held up or read from. It is important to clarify that the witnesses are remembering that this is now on the public record, whether the witness had been given consent by the person who had corresponded with him to read his private correspondence onto the public record.

The CHAIR: I understand your point of order. Ms Mihailuk, did you have a point?

Ms TANIA MIHAILUK: To the point of order: During the course of this inquiry we have heard a number of examples that witnesses have cited that often are anonymous and we have not questioned the issue of consent prior to this. This is an unreasonable point of order.

Dr KAFATARIS: All I would like to say is that my professionalism has been questioned on one occasion because of views that I have held, completely separate to my medical field. Nothing has come of it. I responded appropriately to that. But what if it did? To answer your question, Ms Mihailuk, people that we represent have been persecuted. I have had this happen.

Ms TANIA MIHAILUK: Thank you very much for your answer.

The CHAIR: Dr Kafataris, are you comfortable with where things stand? My ruling is that you have not, as I understand it, identified somebody by name. We have had a number of case studies that have been read into evidence by witnesses. If you are comfortable, there is nothing further we need to do.

Dr KAFATARIS: I am comfortable, yes.

The CHAIR: I will therefore turn to Mr Andjelkovic.

Ms JENNY LEONG: I do not mean to labour the point, but I want to clarify—

The CHAIR: Ms Leong, are you disagreeing with my point of order?

Ms JENNY LEONG: No. At one point the witness said that he was willing to withdraw that part of the paragraph and then we heard from Mr Farlow that his view was that that was not needed. It is important for the record to work out whether or not that part of the statement was withdrawn.

The CHAIR: We will ask for clarification from Dr Kafataris.

Dr KAFATARIS: The statement itself that my professionalism was called into question is not withdrawn. The fact that my personal religious views was the reason is not withdrawn. I will not make any statements about who or where it came from. As we have seen, many others have read off statements that have identified people and used names, and I have not done that.

Ms TANIA MIHAILUK: There is no issue.

The CHAIR: Can we proceed? Mr Andjelkovic.

Mr ANDJELKOVIC: Just to echo the sentiments of the bishop that Dr Kafataris quoted, we do not want to spend our time and resources fighting claims of discrimination because we live out our beliefs. I have had this discussion with Bishop Siluan as well. He would echo that sentiment. We are a minority faith group with a small community. Essentially, an anti-discrimination case could financially wipe out our church.

The CHAIR: Thank you Mr Andjelkovic. The next question is from Ms Preston.

Dr KAFATARIS: I will withdraw that last statement I made, given our case here. I will withdraw all that but the rest of it I will not withdraw.

The CHAIR: Do we need to get clarification? Can I ask you Jonathan to work with the doctor so we are absolutely sure and certain, and we will proceed? Ms Preston?

Ms ROBYN PRESTON: Welcome today gentlemen. My question is to Dr Kafataris. I heard you say that religion is not an attribute; it is based on ideas of the individual.

Dr KAFATARIS: No, I said that religion is not an attribute that is self-evident. Whether you are male or female is usually self-evident. Whether you are missing a limb because you are disabled is usually self-evident. Whether you are African or Asian or Caucasian is usually self-evident. But whether you are Protestant or Catholic or whether you are Jew or Christian is often not self-evident. You can have an Indian person who is a Christian, an Indian person who is a Hindu. It is not necessarily self-evident. That is what I meant.

Ms ROBYN PRESTON: As you could have a minority group as a particular Christian?

Dr KAFATARIS: Yes.

Ms ROBYN PRESTON: The religious espouse is not evident at the time. It is whether a person is impacted by actions by another person as to whether they then talk about their religious beliefs and whether they feel discriminated against?

Dr KAFATARIS: Yes.

Ms ROBYN PRESTON: Based on your comments, do you think that it is sufficient to have something added to the Anti-Discrimination Act that might cover religious beliefs? We have heard that from other witnesses. What are your thoughts on that, rather than a separate amendment bill?

Dr KAFATARIS: Can I just ask to clarify how—

Ms ROBYN PRESTON: The Anti-Discrimination Act covers particular discrimination. Is it something that would be appropriate instead of this amendment that we are looking at, this full bill, that we add something on the ADA to cover religious discrimination?

Dr KAFATARIS: I will talk about principles and practical examples. I will not necessarily talk about points of law because I am not a legal expert. I will defer to the legal experts on that. I would say that religion needs to be protected as an attribute by legislation in New South Wales. There is a deficiency that was identified by the Ruddock report, quite clearly. I would also argue that the way it has been done in other States is probably not, in my opinion, adequate either because many of these cases are from Western Australia, Victoria and States that have an anti-discrimination framework for religion and it is not stopping them being dragged before courts.

I think a different approach is probably warranted, given that religion is not self-evident. It is not like race or disability. You have to factor in beliefs and beliefs are of the individual. The genuineness of a belief should not be determined by another person, so I think a different approach is reasonable.

Ms ROBYN PRESTON: Dr Quirk, I note in your submission under "The Undefined Remains Unprotected", you said:

New South Wales has effectively no religious freedom guarantee and that is a serious gap in the law when compared to many other countries, States within federations and overseas.

Can you point to a country that is doing it well?

Dr QUIRK: That is a great question.

Ms TANIA MIHAILUK: Russia.

Dr QUIRK: I can say something that I think is somewhat useful in that regard. We need to take the best of what is on offer from other jurisdictions and the ones I have looked at most carefully would be the United States and Germany. We need to take the best that we can from those jurisdictions and apply it without being slavish about that. If there is one principle that comes out of those jurisdictions it is that they have a real preference for accommodation when it comes to the balancing of rights—accommodate, accommodate, accommodate where you possibly can. You have to draw limits on that. You do not want the exception to eat the rule. In conscience claims there are examples of that, where people are blocking traffic—in German cases for instance.

There are United States cases where people have a made-up religion, for instance, where if a religion requires, for a prisoner, they get beef steak and beer every Friday. Those are outer limits and you have got to be careful that the whole system does not come into disrepute. You look for the best in accommodation that you can find in those jurisdictions. There are many more cases there than there are here because it has been litigated for so long and so often. In the United States it is an extremely old provision. In Germany it only came in in 1949, but there is a lot of deep thinking there, particularly in the German constitutional court that we could learn a lot from. I hope that answers the question.

Mr GURMESH SINGH: Good morning, Dr Quirk. Just following on from that example of the religion that had beef and beer on a Friday, how do you reconcile that with certain religious beliefs that require people, for example, to take ayahuasca or the smoking of marijuana?

Dr QUIRK: You might be referring to the Peyote case, which is a stock standard one in the United States. I do not think it is for me to reconcile them. I think the law reconciles as best it can in the circumstances of the individual case. That is what is important, to take a fairly stepwise approach. We mimic the United States approach there because we are a common law system and we take each case on its facts and move the law forward in that way. The civil law systems have a different approach; they tend to set out a general rule. But if you look at the way the cases unfold there in response to the general rule, it is still a stepwise process. I cannot cite you the precise example of how that was resolved in that case in detail right now. I am happy to take it on notice.

It is a genuine difficult question and I think even small differences in facts and small differences in the relationship between church and State can also make a big difference. If I can just add in there: Australia tends to get lumped into a pragmatic sort of approach when it comes to church and State, but the United States is more a separationist. In Germany and the United Kingdom, it is more the case where church and state are much closer together. We actually get lumped in with The Netherlands, of all places. That might be interesting. There is a pragmatic approach to our relations between church and State. That is something that could be helpful to know. I hope that helps.

Mr JIHAD DIB: My questions are to Dr Kafataris. Dr Kafataris, my first question is a point of clarification. You mentioned the bill is self-contained and said, "The bill does not override existing protections but provides protection where there are no current existing protections." Correct me if I am wrong in my understanding, but what you are saying is that there will no overriding of other protections that already exist in respect of disability, race, et cetera. You do not see this as one or the other—it is just another protection for people of faith. Am I correct in assuming that that is your submission?

Dr KAFATARIS: Yes. Let me clarify by saying, as I said before, I am speaking on principles and practical examples. I have read points of law prepared by a number of eminent minds who have all basically said that. I believe you heard from people such as Mark Sneddon, Chris Brohier and the good people that were behind the Anglican and the Catholic submission. I agree with that. To me the bill is self-contained and it makes unlawful what is currently not unlawful, but does not affect other attributes.

Mr JIHAD DIB: My second question relates to your conclusion where you say the bill should be passed without any significant amendment. Have you given any attention to the potential of an anti-vilification element on the basis of religious grounds?

Dr KAFATARIS: That is a question that has come up quite often. One of my good friends, as you know, is Sheikh Shadi. We have spoken on this a number of times. The problem is that vilification and discrimination are not the same thing. They should not happen. My view is that I totally oppose the abuse of an individual in whatever shape or form that is, but I totally support the apologetic and the legitimate criticism of an ideology. For example, Sheikh Shadi and I have talked on things. I have said we are not going to agree theologically but you should be able to criticise the Trinity and I should be able to criticise Tawhid. But I support you as a person and I will defend you to the death as a person. Where is the balance?

Mr JIHAD DIB: That is what seems to be the challenge at the moment. The point that you made was very clear—you will not see eye to eye theologically and you have different views, which is fair enough. But what this will be about is protecting somebody else who says, "I am going to have a go at you because of the view that you hold", not necessarily as a criticism of the ideology.

Dr KAFATARIS: That is right, yes.

Mr JIHAD DIB: But as an individual.

Dr KAFATARIS: I have not really found a clear answer legally of how you would do that and I guess others have struggled as well.

Mr ANDJELKOVIC: Mr Dib, if I could add to that?

Mr JIHAD DIB: Of course, sorry.

Mr ANDJELKOVIC: A discussion that I have had with Bishop Siluan asks the question: What are our Serbian Orthodox Christian views on vilification? His answer that he provided to me is: As Christians we believe that every human being, regardless of their gender, race or colour, are created in the image and likeness of God, which translates to humanity having a common dignity and value. Freedom of choice is a supreme manifestation of this dignity. Christ teaches us, "Whoever wants to be my disciple, let him deny himself and take up his cross and follow me."—Luke 9:23. We likewise believe that seeking truth is a supreme ethic. Having the freedom to express one's views, to critique the views, teachings and doctrines of others must remain, as it is fundamental to the very notion of freedom and the pursuit of truth. It does not cancel out the love and respect we are to have for our fellow brethren.

Mr JIHAD DIB: Please thank his Grace, and thank you, Mr Andjelkovic.

The Hon. GREG DONNELLY: My question is to Dr Quirk. I return to a line of questioning which related to some dot points on the cover page which was attached to a copy of your journal article. The heading was "The Undefined Remains Unprotected." I take you to the third dot point where you say, "That NSW has [effectively] no religious freedom guarantee is a serious gap in the law." I want to press you a little on this statement about a serious gap. You could have said it was a gap in the law, but what is your argument that justifies saying it is a serious gap in the law?

Dr QUIRK: I did not sit for a long time considering the precise word I would use, but it came out of the study that I did in the two articles that are listed at the bottom. The fact that it was missing in the list of protected attributes appeared to me to be anomalous, given what the German situation was where they have a constitutional guarantee that appears in multiple forms and that has done since the late 1940s. There is nothing special about that word.

The Hon. GREG DONNELLY: With respect then, you have mentioned Germany. I am looking at your last dot point, which commences, "Other comparable countries". You have already mentioned, in answer to a previous question, the United States of America. You are saying vis-a-vis Germany and the United States of America in respect of your study of those two large overseas jurisdictions, you see that there is a gap in the law with respect specifically to New South Wales. Can you make any comment about the gap in New South Wales vis-a-vis other States and Territories in Australia? Would you like to comment on that?

Dr QUIRK: No, probably not at this point. There are people who practise on a daily basis in the discrimination area and I would rather leave it to them. I could take it on notice if you prefer.

The Hon. GREG DONNELLY: Please take that one on notice. Finally, there has been a line of argument presented by witnesses primarily in the group who oppose the proposed legislation either in full or in part that on the matter of religious freedom protection in this State there ought be a "wait until"—in other words, waiting until there is a full and complete review of the New South Wales Anti-Discrimination Act. Do you have

a view about waiting for a full review or, in light of your comments about the serious gap, proceeding with a bill such as either the one that is before us or a similar type of religious freedom bill?

Dr QUIRK: That is an interesting question. I think it is a political question that I am not equipped to answer but if I could say that one of the reasons that the other jurisdictions that I have referred to, particularly Germany, has the very comprehensive set of case law is that they set that up correctly in the first place. It is a chicken and egg question, in a sense. I do not want to go out too far on a limb on that one. I will leave it at that. There are other rights that need to be considered as well. Earlier, when I was asked about other rights, of course those other rights have to be highly respected. I have no problem whatsoever with that. It appears to me on that particular right, given the list that exists in this State at this time, it is an anomaly if you consider those other jurisdictions for it to be missing.

The Hon. SCOTT FARLOW: Dr Kafataris, I return to where we started in respect of religious belief. Noting your organisation and in particular, as you represent the Middle Eastern tradition of Christianity, how important is it for that belief to be able to be defined as it is under the bill before us, rather than as Mr Latham outlined this morning—some of the suggestions of Anti-Discrimination NSW that there be a more generic definition? You have it, as it is defined in this legislation, as being your own sincere belief.

Dr KAFATARIS: You are asking me to clarify whether I think that the sincerity test that the bill uses is the way to go. Am I hearing the question that way?

The Hon. SCOTT FARLOW: Yes.

Dr KAFATARIS: I think it goes to what I said before. It is not inappropriate to treat different things differently. There is no measure. You cannot do a Catholic X-ray or a Muslim scan. It is not an objectively measurable criterion like that; it is based on your own beliefs. Perhaps certain religious dress may identify you. I get that. Many people do not wear religious dress but they still have their religious beliefs. Someone's right to believe must be protected. I do not see any way other than the sincerity test that does not bring the court into the position of determining what is and what is not doctrine. That is not an appropriate way. Courts are not supposed to make theological decisions.

The Hon. SCOTT FARLOW: I take it in respect of your membership and my knowledge of the eastern churches that it would be fair to characterise it as saying that it would have a much more *Bible*-based belief or a literal biblical interpretation?

Dr KAFATARIS: Yes.

The Hon. SCOTT FARLOW: If you were to use it as a yardstick, as you mentioned before, either to protestant faiths or the Catholic church, or even with Christianity itself, there would be divergence in the views in certain areas between some of the members—I see you nodding there as well—and maybe in the Serbian Orthodox church. In some of your members and other Christian faiths there would be a divergence in views and that would potentially give you some concern in respect of a generic yardstick that might be determined?

Dr KAFATARIS: Yes, there would be divergence. Some of that divergence is on matters that are not that big a deal, but some of the divergence is on matters that are a bigger deal. Some of the divergence, taken literally, would determine whether someone gets into heaven. You cannot have a test that says, "Because this group believes this, therefore, your belief is the same as this or is equally as valuable as this group" even if the belief is different.

The Hon. SCOTT FARLOW: You talked about other examples occurring in other jurisdictions that did have a protection for religious belief. Were they able to seek protection in those jurisdictions at all using the provisions of religious belief under their anti-discrimination Act?

Dr KAFATARIS: The evidence is in this book. In many cases they were not. Even the most high-profile ones, such as Bishop Porteous and Campbell Markham, those complaints were never resolved really. They were just withdrawn so we do not know whether they would have been found guilty or not found guilty. But they still had a case to answer. Tasmania has got quite strong protections and it was not enough to stop that case being brought. The same with Victoria and Western Australia. My point is that if it is not working over there, then we should not adopt the models used by other States at first. We should be very careful before we adopt those models.

The Hon. SAM FARRAWAY: A few of my original questions have already been answered. I will go to Dr Kafataris. There is a common theme in your submission and in what you have said today. My question is a generalised question around the bill, the organisation and the people of faith involved in your organisation. You are not looking for special treatment; you want equal treatment. Will you elaborate on that quickly on behalf of the organisation?

Dr KAFATARIS: We want the same degree of protection. We do not want a sword, we want a shield, so to speak. My kids are great Marvel fans. We do not want a papier-maché shield; we want a Captain America type shield. We want a shield that is going to be enough of a deterrent that stops the cases getting there because the process is the punishment. We also want the freedom to quote our scriptures, even if what those scriptures say is objected to by other people. They do not have to believe our scriptures, but we want the freedom to quote them, to live by them and to teach our children the values of those scriptures. Others can think those scriptures are fairy tales or poppycock if they want to, but we want the freedom to manifest our beliefs without being persecuted.

The Hon. SAM FARRAWAY: Whilst trying to balance the protection in the bill for not only individuals but also organisations, is there any improvement in the bill you can find that strikes the right balance, or do you think the intention of the proposed bill strikes the right balance between the individual and organisation? You touch on this briefly in your submission.

Dr KAFATARIS: My own view—and I think the people in the organisation would probably agree—is that I think we have to be consistent. If a religious ethos organisation is going to say that it is a religious ethos organisation, the burden of proof lies on it as being able to prove that it is one. Also, their doctrines have to be applied consistently. For example, a religious school cannot jump up and down about a teacher in a same-sex relationship if it is going to look the other way when teachers are involved in de facto relationships, which the *Bible* would call fornication. I think there has got to be consistency. I think the bill is the best I have seen so far that strikes the right balance. The only suggestion I would make is that religious ethos organisations have the burden of proof; they have to show that they actually are. You cannot just turn it on and off like a tap, such as you have never done something for religious purposes and then something comes up and they say, "Oh no, we are a religious ethos organisation." I do not think that is appropriate.

The CHAIR: I thank our witnesses today. All of our members have asked questions if they had elected to do so. Firstly, I thank Dr Kafataris and Dr Quirk via videoconference, and also Mr Andjelkovic, for your attendances today. Thank you also for your submissions. I note that you have handed up from Bishop Siluan a note which we will circulate to membership. There will be questions on notice; you have taken a number. What will happen is the Committee secretariat will compile those for you. You will have a corrected transcript to work from so you will be able to better answer those questions. You are not under any compulsion to answer. We would love you to answer, if you could, to assist us in our deliberations, but it is voluntary. On that note I will close the witness hearings and thank you again very much for your time this morning.

(The witnesses withdrew.)

MAHMUD HAWILA, Adviser, Lebanese Muslim Association, sworn and examined

SURINDER JAIN, National Vice-President and Director, Hindu Council of Australia, sworn and examined

GAGANDEEP SINGH, Assistant Company Secretary, Australian Sikh Association, affirmed and examined

NARINDER SINGH, Assistant Treasurer, Australian Sikh Association, affirmed and examined

The CHAIR: Good afternoon. My name is Gabrielle Upton. I am the Committee Chair. Thank you very much for your submissions and for taking the time to give testimony before our very large Committee, who you can see today. I welcome in particular Mr Surinder Jain, National Vice-President and Director, Hindu Council of Australia, Mr Narinder Singh, Assistant Treasurer, Australian Sikh Association and Mr Gagandeep Singh, Assistant Company Secretary, Australian Sikh Association. I welcome Mr Mahmud Hawila, Adviser from the Lebanese Muslim Association. Thank you, gentlemen. I want to introduce our Committee members to you.

On my left is Mr Paul Lynch, Deputy Chair and member for Liverpool; the Hon. Catherine Cusack, member of the Legislative Council who is joining us via video conference; 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, who is also joining us via videoconference, member of the Legislative Council; Ms Jenny Leong, member for Newtown; Dr Joe McGirr, member for Wagga Wagga; Ms Tania Mihailuk, member for Bankstown; Ms Robyn Preston, member for Hawkesbury; and Mr Gurmish Singh, member for Coffs Harbour.

We have limited time with you. We will proceed with questions straightaway rather than having any opening statements. We will rotate amongst Committee members alphabetically and I will call on members to ask questions. There will be approximately four minutes for a question and an answer, but we can go a little over or a little under. That is to ensure that all members have an opportunity to ask questions. You can take questions on notice. You might find that members will say, "Will you take that on notice?" That will be something that with a transcript from Hansard you will be able to consider your answers, although you are not compelled to answer those questions. It would be good if you could to assist us. The first question is from Ms Leong.

Ms JENNY LEONG: Thank you for joining us this afternoon. Obviously, this Committee inquiry is focused on a One Nation bill that has been put forward by a member of the upper House to try to address the issues of protections around religious rights and freedoms. While we have heard many differing views and strong opinions about this specific bill, one of the things that we have heard from the vast majority of witnesses has been that there is a need to update the Anti-Discrimination Act to include protection of people that have religious belief to not be discriminated against in the State of New South Wales. I ask all of you whether you would support the Government acting to provide an attribute that would protect people from discrimination based on their religious belief if that were to be a separate action to this bill? It would be great to get your opinion and then I will move to the next question.

Mr HAWILA: Yes, I would support the changes to the ADA to bring other faith groups in line with protections offered to ethnoreligious groups and other protected groups.

Mr JAIN: We support that discrimination based on religion would have the same consequences as discrimination based on race.

Mr NARINDER SINGH: We from the Australian Sikh Association also support the bill with maybe a few amendments.

Ms JENNY LEONG: If this bill was not acted on but the Government was to go through a different process to protect people from discrimination on the grounds of their religious belief, would you also be supportive of that action?

Mr NARINDER SINGH: Yes, we would.

Ms JENNY LEONG: I turn to the Australian Sikh Association submission. You specifically refer to the scope of religious ethos organisations and discuss your supports for limits that would limit the protections to organisations that teach and practise faith rather than the delivery of all services or other activities of that religious organisation. Will you expand on that a little further?

Mr NARINDER SINGH: Yes. There are some isolated incidents where we have seen some Catholic schools when they recruit some of the students. They want to go to the Catholic schools because of their discipline and the quality of education is better than the public schools and even the private schools. But the condition of entry is that you should have short hair, you should not be maintaining long hair, which is part of their uniform

policy. They have a condition that as a part of their uniform protocol you should not be wearing anything on your head. They want a clean cut. That is the thing which in Sikhism, one of the symbols is our hair, that we cannot cut our hair. We have to maintain our hair as the gift given by the God, the creator. If you include the private schools or any education institutions as a part of religious organisations, then this bill might protect them because they will say that we are promoting our own religion. Therefore, the people from the Sikh community, those who are maintaining long hair, they will be deprived of a quality education which they are expecting from their organisation.

Ms JENNY LEONG: Just to clarify, there would potentially be a contradiction where the religious ethos organisation would be trying to act on its religious beliefs and students at the school would be wanting to engage in another service provider, but that religious organisation would also be acting on the basis of its religious beliefs. Therefore, there would be a conflict between those two elements.

Mr NARINDER SINGH: Exactly, there would be.

Ms JENNY LEONG: You mentioned the issue around bike helmets. I ask you to expand on that in the context of that being an individual risk—that people would be able to have an exemption to not wear bike helmets versus, for example, whether you think there should be support for religious organisations to not abide by public health orders or other similar orders that would prevent community transmission of, say, COVID-19 or other things. Will you talk to your views around exemptions in one case and whether you are supportive of exemptions more broadly and how you see those things intersecting. It is a complex area which would link to both of those elements.

Mr NARINDER SINGH: It is like a catch-22 because we have to put on our turban. The turban overrides anything as a part of the five symbols of Sikhism and we are not supposed to put a helmet on to replace the turban, basically. But then if you are riding a bike or a motorbike on the public roads it is for your own safety and if you injure yourself in a road accident then you are high risk to yourself. If you look at other States in Australia there is a contradiction. I remember that in Western Australia they have a rule where Sikhs are exempt from wearing a helmet. That rule is only allowed to those Sikh people wearing a turban, not to the person who is a non-turban wearing person. This exemption should only be extended to the turban wearing people who want to ride a bike. If you are riding a pushbike it is for the health of yourself and you do not want to go in any public transport and the same thing with a motorcycle. If I take you beyond Australia, to Canada, in the USA and even in the UK there are similar exemptions for the turban-wearing Sikh population that they are exempt from wearing the helmet.

Ms JENNY LEONG: I think it is useful to have that specific example of how we weigh up and balance these things. I express my apologies for the fact that in your submission you refer to the fact that some of the Sikh Association representatives were not able to enter the Parliament as a result of their own beliefs and practices. I think that is genuinely concerning and something that we need to address through the protections and recognition of the rights of people to practice their own religious beliefs.

Mr NARINDER SINGH: Even to enter to make our submission and to attend this public hearing we have to contact the Committee manager and advise him in advance that we will be coming in our kirpan. It is not a dagger, it is not a knife, it is a very respectable symbol for a Sikh person, which is an article of faith like what you use in Christianity. It is a very respectable thing which always stays with our body once we are baptised. You will not see this ceremonial knife with any other Sikh; it is only with those who are baptised into the religion. Only they are supposed to carry it. Even though there is a Summary Offences Act which allows the carrying of the kirpan, if there is a reasonable argument and if there is a religious purpose—I will just go to the section which is in the Summary Offences Act.

Ms JENNY LEONG: Please do.

Mr NARINDER SINGH: Section 11 (c), which I think I have put in my footnote, number 5, there is a subpoint which says that if you are wearing it for a genuine religious purpose then there are no buts—you can have it. Even though it is in that part of the section but when we are coming into the New South Wales Parliament, a public domain, we have to get special permission.

Ms JENNY LEONG: That seems concerning and something we should follow up beyond this Committee.

Dr JOE MCGIRR: Can I just clarify that last point that Ms Leong made. Was permission to enter Parliament refused, or was it a question of clarifying?

Mr NARINDER SINGH: It is not to us. The example I gave in the submission was in 2016. There were three youngsters who came to attend some convention in the Parliament and they all three had a kirpan and because

they did not have a prior arrangement with Parliament that they are coming in their kirpan they were not allowed to enter.

Dr JOE McGIRR: If there is a prior arrangement is entry now okay?

Mr NARINDER SINGH: Yes, for us it was allowed; there was no issue at all.

Dr JOE McGIRR: Mr Hawila, your submission is generally supportive, but has raised a number of concerns. You have raised concerns around section 22N and this relates to an employer's capacity to not discriminate or discriminate outside the workplace. You have raised the issue of comments that may be offensive to others in respect of other issues. This is actually an important issue in religious discrimination and the capacity of an employer when someone is acting according to their faith outside their work. There is, it seems to me, potential to discriminate in that case. I am wondering how you think this should operate?

Mr HAWILA: We broadly agree that the legislation should speak to discrimination in the workplace. We are not opposed to this legislation going into that field. It is just the case that we think the bill gets the balance wrong. In some ways it goes too far to protect religious views and in other ways it does too little. We set out each of those subsections and whether we agree or disagree with it and whether it goes too far or too little. Broadly, we suggest that a commonsense approach is taken to discrimination in the workplace. A religious ethos organisation, much like any other organisation in the corporate world, would have a charter of rights, be guided by a founding document, a constitution or objectives within the constitution and I think those organisations are expected to abide by those objectives and those principles set out which reflect their ethos.

In the event where a particular employee's behaviour, for example, is directly clashing with those objectives then the organisation should have the right to take some form of action. In the same way that corporate organisations report to their shareholders and the shareholders expect the company to maintain the company's ethos these non-government organisations, not-for-profit organisations predominantly, ought also to uphold their ethos.

Dr JOE McGIRR: Would that not be covered by reference to "material detriment"? That is my first question. My second question, just to clarify, is that you are not saying an employer should be able to discriminate against someone for their activity outside of work that relates to their religious faith. You are not saying that.

Mr HAWILA: I think the question as you have put it I do not disagree with. It is the case, though, that conduct outside of work can contradict the ethos of an organisation. Where that contradiction flies in the face of the organisation it is within the organisation's right to take action, much in the same way that members of Parliament are guided by codes of best practice even outside the conduct of parliamentary duties. The employer has rights to maintain the employment of any employee or to extend beyond what transpires at work.

Ms TANIA MIHAILUK: You are saying it should?

Mr HAWILA: It should.

Dr JOE McGIRR: Is the wording around "material detriment" enough or not enough? Is there something you would suggest in that respect?

Mr HAWILA: I do not disagree with the wording "material detriment".

Ms TANIA MIHAILUK: Just on that, it seems your comments are in direct contrast to what the Imams council and the Australian Federation of Islamic Councils have said in relation to that protection. I want to clarify that is your view on section 22N. You are saying that activities of an employee beyond their employment should be of interest to the employer and the employer could curtail that. Is that what you are suggesting, or they have some sort of interest in what the employee may or may not do with respect to faith beyond employment?

Mr HAWILA: I thank you for the question. This needs to be dealt with with a level of reason and common sense. It should not be an outright termination of employment if an employee puts a post on Facebook, for example, that does not align with the organisation for which they work. There is a level of common sense that needs to be applied here. The example that I would give is that if a company has a social media policy and it breaches the terms of that policy, the body of employment law is fairly clear when it says that you have a policy and you are in breach of the policy and you are liable for some form of disciplinary action from your employer.

To the extent where it is a faith-based right that you are practising outside of work—and it is generally faith-based—then one ought to be able to practice their faith. And so, I am not saying that the employer should have free rein to go about and stop their employees living their life outside of work—of course not. That would be contradicting the principles of this bill. But a level of reason needs to be applied, to enable employers to somewhat monitor conduct outside of work and ensure that it is aligned with the ethos of the organisation.

Ms TANIA MIHAILUK: I must say, we have had very much a different view from other members of your Islamic community, who have certainly, together with some of our other religious organisations, said that value—their faith—cannot just simply be managed from nine to five. You are a Muslim 24/7, every day, seven days a week. As part of Islamic faith there are prayers every day. There are special prayers on Friday, for example, and the right to attend those prayers. There are sermons. There are all sorts of activities that are required of somebody. Would there be perhaps some benefit in narrowing that definition of 22N? Would you see perhaps some narrowing that could be seen as more acceptable to the LMA?

Mr HAWILA: I completely embrace the comments that you have made. Like I said, where it is genuine practice of religion outside of work, no-one should stop that. Our submissions do not call for someone who is practising religion outside of work to be stopped or prevented from doing so by their employer or otherwise. Where someone is practising their faith outside of work, nothing prevents it. I do want to be clear on that point—and that is any faith group.

Ms TANIA MIHAILUK: Presumably that could also mean that they are using social media. For example, I have many of my community constituents that listen to the Friday prayers over the internet—over social media—particularly over the COVID period. What if their employer found it offensive that they were listening to that or adhering to that or making comments during lunchtime, for example, on something that the sheikh might have said in that time?

Mr HAWILA: There are several levels in your question. Practising religion—there is the attendance of the Friday prayer, which a Muslim would view as compulsory. That attendance ought to be facilitated, where possible. I used to work in the police and sometimes when I was out at a job it was impossible for me to head out to the mosque because I was stuck in other frontline operational duties. Obviously, I was unable to leave. I did not feel discriminated against. That is a good example of where the core business of the organisation prevented me from practising my faith, but I had consented to working in that organisation and I was fine with upholding my oath to fulfil my duties as a police officer at that time.

Ideally I would have been able to go to the mosque and I would have felt better if I was at the mosque, but circumstances dictated otherwise. I am sure I speak on behalf of the LMA when I say, broadly, one should not be discriminated for practising their faith at work or outside of work. I think that is common sense. Broadly, one should not be prevented from going to the mosque, be it after hours or—

Ms TANIA MIHAILUK: But presumably not being discriminated by their employer, as well, is the point you are making?

Mr HAWILA: Yes, of course. I embrace that. I am not calling for anything more than that. But, at the same time, I think 22N needs to be tightened up. In some places it does go too far, which is why I illustrated examples of where the employer might want to take action. Say, for example, I was in the police and I abandoned my post just to go pray. That would be a drastic risk to community safety, if I would have just up and left. A commonsense approach needs to be taken. An element of that is community education. An element of that is education and communication with the employer—to communicate, for example, "Fridays are important for me. I need to go to prayer." So, 22N is problematic, but this is not new territory for employment legislation. It has always been a conflicting issue between employers and employees about what an employee wants to do and what an employer has the rights to curtail or to take disciplinary actions in result of.

Ms TANIA MIHAILUK: But, broadly, you are supportive of the bill?

Mr HAWILA: Yes. So, 22N just needs to be reworked. In principle the LMA supports 22N. It just needs to be tightened and it needs to reflect that sort of commonsense approach.

Ms ROBYN PRESTON: Mr Hawila, I just wanted a point of clarification, please. Earlier on, you were asked whether you felt the Anti-Discrimination Act was appropriate for a section to have religious discrimination in it. Are you saying are now that that would be better, or do you support this bill and the amendments that are going forward here in preference? I just want to know where you sit with that.

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

Ms ROBYN PRESTON: So, you are saying this bill before us and these amendments would address something that has not been addressed over 30 years?

Mr HAWILA: Yes, precisely so. I just raise two points where I suggest that it does. Firstly, in relation to adding religious groups as a protected characteristic—sorry, I will raise that one point. But a place where this bill falls dreadfully short is not including protection from vilification for those faith groups that are being added.

Ms ROBYN PRESTON: Which is 22C, where you talk about that?

Mr HAWILA: Yes.

Ms ROBYN PRESTON: And that is on page nine of your report?

Mr HAWILA: That is so.

Ms ROBYN PRESTON: You say:

... the Bill does not extend existing anti-vilification legislation that protects certain groups, such as Jews and Sikhs, to all religions.

Would you like to elaborate on that, please?

Mr HAWILA: Yes, please. That is what has motivated me to come here today: 20C exists. It is an anti-vilification provision and it prevents vilification for certain groups already protected by the ADA. It does not extend to Muslims and other faith groups. It extends to some ethno-religious groups, such as some of my colleagues here and the Jewish community, but does not extend to, for example, the Muslim community. In another role I appeared in a separate parliamentary inquiry on Friday, in relation to the gay and transgender homicides between 1970 and 2010. I appeared on behalf of the Australian Hate Crime Network.

I know full well the link between hate speech and how that speech can foster an environment that is susceptible to hate crime. There is a direct link between this hate speech, which anti-vilification laws would prevent, towards crime. We can prevent criminal conduct by curtailing hate speech. It is one thing to protect Muslims from discrimination, for example; it is another thing to give the legislation teeth. It is also incredibly important to give equal protections to the other faith groups within this bill. That needs to extend to the 20C existing vilification provisions and extending that to those new protected groups.

Ms ROBYN PRESTON: Thank you. Chair, do we have time to invite the other witnesses to please comment on that?

The CHAIR: We have 15 seconds and I was going to move to Mr Singh.

Mr GURMESH SINGH: I will give a minute of my time.

The CHAIR: Gentlemen, would you like to comment, please?

Mr JAIN: Our belief is that religious freedom applies to me. My religious freedom is what I do with myself. What food choices do I make? How do I decorate my body? How do I pray, et cetera? It does not extend to other people. I should not project my beliefs on to other people and call them names or say they are not as good as me. Coming to the employer, if the employee is the face of the company, like is the ambassador of the company, I think what they do outside employment hours can be regulated. But if I am an employee working in the back office and nobody knows that I work that this company except my colleagues and my employer, I think then what I do outside should not be controlled in a severe way.

Mr NARINDER SINGH: I share the same views of my two colleagues. I will say as well that I work for the public service myself. Though we have APS code of conduct and we have APS values, when you are out of the work you still have to promote the APS values and you are not supposed to be talking anything which might bite the organisation for which you work. If what Mr Havilah just explained that outside the work, if you are talking about a religion that you should be having a freedom. It is up to the legislators that they should be doing the fine juggling and they should find the right balance between the horizontal equity and the vertical equity. So that the individual person or the individual religion are also meeting their goals to get the horizontal part as long as all the wider Australian communities.

They are also happy with the implementation of that Act. Now, if I quote myself, because if you look at our experience right now, we have a very unique appearance that we have always have a turban and we have long hair. I will show you. Mr Gagandeep Singh's—it is long. My beard is as long as him, but I prefer to tuck it in so that I look more presentable. This is my individual choice. I cannot target him, as Mr Jain just explained, that the religious belief should be only attached to the individual person and how he wants to practise his own religion. We both are practising a religion very nicely and to the code I would say.

Now, if you look at the census results of 2016, in Australia there are more than 126,000 who are practising Sikhism. After Victoria, we are the second largest populated State in New South Wales which has got at least 32,000 Sikhs residing in New South Wales. The enactment of this bill is going to affect the life of those 32,000 Sikhs people if they are putting turban and they are going to a workplace. There are indirect discriminations for those people which we do not want to happen, so that they should be allowed to wear the turban and carry their kirpan because it is not in a way interfering with their personal commitment with their work. They might be the right employee. They have got all the right technical skills and capabilities. The turban should not be a hindrance for those employees so that the employer can either directly discriminate or indirectly discriminate them.

Mr GAGANDEEP SINGH: I just want to heads up on a little bit of this one. I work for law enforcement as well. I have never been discriminated so far over the time of the recruitment and then while working in prisons. I work for the prisons. The only reason I want a heads up in relation to the kirpan is, yes, we need to take information from the Government in writing and the kirpan has to be in a designated length. Every morning when we get into the centre, it has to be taken out for the screening purposes. It has to be jumped in and you can wear it back. In terms of the religion, this is against actually.

It is the same as a bangle; I am wearing it. Different prisons have different protocols. It depends on a maximum and a minimum security. I do not know why that has not been raised in the past, back in the years, but that is a part of, as he said, our culture and a symbol which cannot be taken off. The only time we are taking our kirpans off is when we are heading on an international flight or even here on domestic flight. In India you can carry your kirpan with domestic flights, but, yes, overall for the international ones due to the security reasons we have to take it off. Briefly, I just want to say that in relation to kirpans I see a bit discrimination with this thing, yes and no, because, by the end of the day, kirpans are concealed when I am jumping in with my colleagues during a morning when jumping in a prison. So other than my staff members, obviously not any inmates or anyone can what is happening around, but I would say every morning practice that has not been changed in corrective services for a long time. We have employed seniors to be working nearly 40 years in corrective services. Yes, this is a little bit designated length that is no longer than this one.

That needs to be considered as well for the future. That can be a discussion in a later stage. In relation to a little bit this thing, which I do not want to say it in a very exposure, for my seniors as well, nobody has seen a Sikh wearing a turban as an inmate. But anything can, any consequences or anything can happen. Recently, there is some case happen in New South Wales. That inmate was taken out of his turban while jumping into the prisons. I personally see only this thing if somebody else is on a RIT—so RIT is a risk intervention thing. If he is not suicidal or self harm or anything it is a different thing to the normal ones. The inmates, if it happens, they should be allowed for the turbans as well.

There is no such policy in the cops. There is nothing written there either. I do not know why. It is a bit of a grey area, but that needs to be done as a religious freedom. So, somebody is in custody and he should be practising the same thing. Somebody practising Sikh, so saying, in other words, baptised Sikh, I reckon if he or she is wearing a weapon, which you guys called it but it is a ceremonial sword, that should be taken off because it is a risk to the other inmates. But in terms of the turban, it is just a piece of cloth, and that should be practising for the inmates as well. Otherwise it is just a hair bun and you cannot have it without the turban on, even being an inmate, so he or she will be discriminated as well. But for my seniors from last 35 years, a lot of seniors to me, they have never seen any Sikh inmate into custody. I just want to put this one in front of the Committee in relation to the staff and in relation to the inmates.

The CHAIR: Thank you, gentlemen, for all of those contributions which were incredibly important for the Committee to hear. We skipped across a number of members' time. I acknowledge that Mr Donnelly and Mr Farlow had dedicated their time.

The Hon. GURMESH SINGH: I thank the Australian Sikh Association for its submission and for bringing into light how you have to get a special provision for the kirpan, especially with regard to the Parliament. That is something my parents did not know they could do. They had to leave theirs in a hotel room when they came for my inaugural speech. My question is to Mr Narinder Singh: You have worked in various different fields during your time. I want to ask whether you have experienced any discrimination with regards to the wearing of your turban and your kirpan? Before you start, I have had a few questions from other members of the Committee. They would like to see what a kirpan looks like. If you do not mind, could you demonstrate what one looks like?

Mr NARINDER SINGH: It is just this piece. This is the metal and then—I cannot take it out because the whole thing is if you take it out, that is only for the purpose of self-defence, of protecting the person who is weak. That is the whole idea. If you will look at your statistics you will never find any crimes by a Sikh person in a turban that he has stabbed someone with his knife, because it looks like a knife but it is not a knife. It is a very sacred thing for us which goes with us when we are born and we are baptised. It stays with our body and it stays

intact until our death because if it is separated from our body we have to get rebaptised. It is the same thing with the hair. If we had a head injury and the surgeon has to do an operation that they have to remove our hair to do the cut, to do the stitches. So we again have to present ourselves in front of our five beloved ones and they have to excuse us because it was something beyond our control, and then we have to get rebaptised. That is the significance of these articles for a real Sikh person who is baptised.

Mr GURMESH SINGH: I am mindful of the time. Could you go into any examples you have had in your working life where you might have come across discrimination?

Mr NARINDER SINGH: Sure. I worked for the New South Wales police service. That is one of the toughest organisations in terms of recruiting a person who does not fit into their uniform policy. We were the lucky ones, so I had a very good experience with the New South Wales police service that they recruited a Sikh person with turban and wearing the sword. Then there was only one incident because it was ignorance of other beliefs, because we were putting the crown which they used to give us. Because we are wearing the turban every day, we cannot put the crown. So we have to do the crown every day when we do our turban. One of my colleague, he put his crown and it was not 90 degree. So when he tucked the pin in, it became at nearly 85-degree angle. One of our Australian colleague, they felt it was an insult to the Crown and they complained to the uniform protocol officer that the Sikh people are not good for the force because they are insulting to the Crown because the crown is not 90 degree. She told us that "I am going to put a complaint against your people". There were three people working in the police service. Then we said, "Okay, you can go for it," and we did not take it seriously. Then she was very serious and the complaint was lodged.

We were actually interviewed by the uniform protocol officer of the New South Wales police service at the College Street head office. Then, luckily, when we have walked into the foyer and they had some artefacts in the Egyptian hall where they had one police hat which has got the crown at nearly 65- or 70-degree angle. So we just noted that artefact number and then we met that Inspector. His own police hat was upside down on his table because we know that technically you cannot put the police hat straight because it destroys the brim of the hat, we were told. That crown was totally upside down. Then we explained to Inspector Green that "I think you are doing worse crime than us because our angle is still at 85 degree but your angle of the crown is totally worse," and then he immediately dismissed that complaint from that colleague. Then he actually welcomed us to tell the police service that "What will be other articles of faith that you need from us, and we will include them".

Then we told everything—that this is a piece of cloth which is eight metres long and when we put the pin on our turban, because it goes through maybe five or six layers of cloth, and when we do it every day it destroys our turban. So he made it official headgear of the police service. He said, "From now on, either you get us a supplier who can supply the turban on behalf of the Sikh people, or you can reimburse whatever the cost of the turban is." So that was a very generous move by the employer because I think he just created awareness, basically. Some employers are—I think especially when they are very high-profile employers, like police service, they can do it and they listen to it. The good thing was that Inspector Green did a very thorough research on the Sikhism and he was actually double-checking with us to make sure that we are not crossing our limit—we are telling him only that much which is only required by the Sikh faith. We were very honest with them so they allowed us to wear the turban.

Even we were not supposed to put this in the police service because it is a metal bracelet. The reason for the police service is that if I am putting it on and a criminal can hold me from here, then I am locked. I cannot do anything. So he told us that they can actually grab you from your bracelet and they can drag you and they can put you on the public street and you might be run over by the car. Even the police service allowed us this bracelet that, for Sikh people, we allow you this as well as article of faith. Then, with the long hair, I think they have a uniform policy that your hair should not be below your collar—the reason being that offenders can hold you from your ponytail and they can again drag you. So they said your hair has to be small. So then we did a workaround with the uniform protocol officer and then we told them that our ladies from the Sikh community—those who are baptised—will also have the similar turban but of this type. So he allowed everything for us. We were lucky that we got an employer who was very considerate. There was a possible case of discrimination. If we did not get the help from that high-ranked officer, then maybe I might have lost our job. But because he was aware of Sikhism, then he allowed everything, which was the good part for us.

The CHAIR: Thank you very much for sharing that with the Committee. It is very helpful.

Mr JIHAD DIB: Thank you, Mr Narinder Singh, for explaining that; and thank you, Mr Gagandeep Singh, for telling us how it works in the corrective services. It is a good example of what Mr Hawila meant when he was talking about common sense and trying to find a workaround for a situation. Mr Hawila, my question is almost like "How long is a piece of string?" but I am conscious of the time. What would you see as the impact on

the Muslim community, and other faith communities, if nothing was to change in the current Anti-Discrimination Act—in other words, if we kept holding on?

Mr HAWILA: Firstly, it might be another 30 years before we can get a panel together and advocate for some equal protection. That aside, we would be in breach of our international obligations by not protecting the freedom to practice religion. Those international obligations are reflected in section 3 of the bill and in our Constitution. More importantly, the reason why the Muslim community—amongst other faith groups—has been campaigning for the past 30 years is because, firstly, they are not protected from discrimination currently; and, secondly, they are not protected from vilification even under this bill. The long-term impact on the community would be absolutely tragic. The reason I say that is because I alluded earlier to my background in hate crime research. Hate crime only exists where hate speech is allowed to exist. Hate speech fosters hate crime.

Because the Muslim community has not been protected for so many years, they are a really good case study of what happens when a community is without protection. We only need to pick up the paper to see how often the Muslim community is being targeted when many other communities have protection from such mudslinging. There is a report that is published by Charles Sturt University, together with an organisation called Islamophobia Register Australia. That is a victimisation survey where, if a victim receives a hate incident—be it hate speech or a hate crime—they can report it to that victimisation survey. In the past report—the 2019 report—there were over 500 incidents. I have written down the statistics here.

Ms TANIA MIHAILUK: Was that over a year?

Mr HAWILA: Over a year, yes. There were 551 incidents and 70 per cent of the victims were women. Of those women, 96 per cent were wearing the hijab. The hijab is the Muslim veil, and that is the veil that just covers the hair, not the face. It is actually relevant and timely that Mr Singh indicated that members of the Sikh community are targeted because of their appearance, because that report confirms that the majority of hate incidents are motivated by one's appearance. I said 96 per cent of them were wearing hijabs. They were mostly younger females between 20 and 39 years of age, and 14 per cent of the stats involved children who were unaccompanied—walking to school, at the shops. Their parents were not with them. That report makes a recommendation for anti-vilification legislation because that link exists. Amongst academics and, if we look at other jurisdictions, amongst other counterparts the link is well established. We are just a bit behind the times in New South Wales, but that is okay; we are getting there.

I just want to bring this Committee's attention to one other thing in relation to the trauma that is held in the community. I know my time is short, and I apologise. Every time there is a hate incident, it is not like a common assault. I am happy to see there are other members of the police service or former members here. It is not just a direct victim of common assault, like it would be for an average assault. When it is a hate incident—when it is motivated by one's appearance or faith—the impacts of that assault reaches the whole community. Academics call that the ripple effect. I was giving the same evidence on Friday in the Macquarie Room in relation to the hate crime inquiry.

That ripple effect affects a whole community. Between 1970 and 2010 it was the LGBTIQ community. There were 100 homicides. That is what happens when you leave it, when you leave these people unprotected. There needs to be protected characteristics and the law needs to apply to them equally. Otherwise, if left unchallenged those offenders are emboldened, they become further entrenched in their views, they become further radicalised and the victimised communities lose less and less faith in the system. They stop going to the cops. That is the problem we are facing now. There is under reporting. The cops now are saying we are happy to take hate crime reports, come to us. But the community is not going.

This is an opportunity now to address the inequalities at the outset before it gets to the police, before it reaches that hate crime level, and it could potentially prevent far more catastrophic incidents arising. I implore this honourable Committee to not only introduce the equal protections to other faith groups that are outlined in this bill, do not do a half job, do a full job and include the anti-vilification provisions. It is in 20C. We are asking for the same words. We have copied that on page 9 of our submission. Extend it to the other faith groups. The whole point of this bill is to make it an even playing field. We are only going half way. With anti-vilification provisions we go the full way.

Mr ALEX GREENWICH: I thank you all for providing such clear and compelling examples of religious discrimination. Your appearance has been extremely helpful in our deliberations. Concerns have been raised by organisations, including the Australian National Imams Council and others, that this bill could potentially facilitate further religious discrimination, highlighting section 22M, which some have considered to empower a religious ethos organisation to discriminate on the grounds of a person's religion. Could you talk to your concerns around section 22M of the bill, Mr Hawila?

Mr HAWILA: I apologise, I know I have taken a lot of time. I apologise to the other panel members. I will be brief. At page 8 of our submission we also make the submission that the bill strikes the wrong balance. We give the example of discriminating on the grounds of religion, and going over to page 9, we give the example of a private school that has a particular faith, say a Catholic school as an example, being able to take action terminating someone's employment if they change to another faith. Section 22M in its current wording, in its current iteration would allow a religious ethos organisation to terminate an employee for their change of faith. This is where I say that we need to get the balance right. Of course we should not stop people practicing their religion outside of work. At the same time we should not allow these employers to discriminate against their staff on religious grounds. It is difficult, but this question is age old. Whenever you have a freedom, it needs to be curtailed to an extent. It is not a new problem, and I am sure this Committee will be able to sort it out.

Mr JIHAD DIB: You have got confidence in us.

Mr JAIN: Can I respond to that please? I give an example of how this law could affect any religious community, especially the Hindu community. If I am a cardiac surgeon in a faith-based hospital, once this law is enacted I am not a preferred employee any more. I have a choice of leaving that. I cannot go to any other faith-based hospital, because there are no Hindu faith-based hospitals. Or I can stay and convert my religion so that I can keep my job. That would be an unwanted pressure. And it is not going to end after conversion. If I change my job after five years I will have to go through another conversion so that I can keep my job.

We think that identity of being a religious organisation should be limited to places where religion is being taught, like churches and temples, or where religious rituals are being performed. It should not be extended to activities that many secular organisations do. Religions do great jobs in providing service and have created great organisations in Australia. But so have some of the secular organisations that are hospitals, which are not faith-based, and they are doing a good job. There are aged-care facilities. I think only when it comes to practicing rituals that the religions are teaching, that part should be protected as a preferred faith-based employer, and not other jobs.

Mr NARINDER SINGH: I think in terms of Sikhism, I share the same view with what Mr Jain just explained. In India, I went for my father's eye testing. He went to a Christian missionary hospital. The reason for going there was that they had the latest technology. They told us that if you are not Christian we will not be able to support you, we will not be giving you any treatment. That means that they were promoting that either you convert yourself to Christianity, or the service is not for you. That same thing might happen in Australia, in New South Wales, once we enact this section, that if we include the hospitals or schools or any such institutes under the religious ethos organisation. I think that the Committee should be careful of that. As I think Mr Hawila mentioned about the hate crime, I will touch on that.

The Sikh people, the innocent people, without being a part of any wrong activity, we are the biggest target of hate crime just because of mistaken identity. Because our appearance is very much for an innocent person, for a person who does not know who a Sikh is and who a Muslim is, they just take us that this guy is Osama Bin Laden. These are the people who have bombed in America on September 11, and there were many incidents past September 11 that the Sikh were the innocent victims and it was not only physical assaults, it was actually killings. In the USA a 40-year-old male person shot dead six Sikh people, just because of their appearance. Therefore, even though this bill has got nothing to do with a mistaken identity, and having said that, what my main concern is, even we know that we are getting attacked, you will never find a Sikh person to still remove his turban and clean shave and cut his hair, because they have respect for their religion, because this is something which the God has given us, that we have to have it, we cannot live without it.

Even if you come to our place of worship, you will see how we practice. We are the largest organisation in New South Wales out of six organisations, and we are always giving away. We always give away a lot of things to charity, but we never ask anything in return, never. That is one of the fundamental tenets in Sikhism, that we believe in giving away. We never ask any question so that you must convert to Sikhism. I will refer you to India. In India we have got a big hospital where you can have magnetic resonance imaging [MRI]. In India MRI is very expensive. If you have to get an MRI done you have to spend more than 20,000 rupees. The Sikh place of worship, they are giving it for free. Anyone who needs an MRI, they are giving it for free without asking them to convert into Sikhism. We are that generous a religion, and very unique. That is what I will add here.

Mr ALEX GREENWICH: Thank you all.

The CHAIR: The final question goes to Mr Latham.

The Hon. MARK LATHAM: My question is for Mr Surinder Jain from the Hindu Council. Earlier today we heard from the head of Anti-Discrimination NSW. In their submission to the inquiry they have written that they do not believe that religion is relevant to artistic performance, food and drink service, or provision of

welfare, which I am sure will be news to millions of religious people in Australia, because they are the beneficiaries of the various welfare services. That is what they said, that religion is not relevant to artistic performance, food and drink service, nor provision of welfare. If Mr Jain could comment on that, particularly in light of his submission that states:

Religion can be a criteria for employment or subcontracting etc only when it comes to teaching or performing religious rituals.

This goes to section 22U of the bill "Exception-genuine occupational qualification".

Mr JAIN: Yes, I will respond to that. I take the example of food. Most Hindus believe in eating vegetarian food. Anyone can cook vegetarian food; you do not have to be Hindu to cook and sell vegetarian food. Religious freedom should be what I do to myself. If I am a vegetarian I should expect that kind of food no matter who cooks it. In Australia, in fact, we have a discrimination against religions when it comes to food. Some religions can identify their food that it adheres to their religion. Others cannot; Hindus cannot. As far as employment is concerned, every job has a job description which may include so many things; that you should be hygienic, you should be healthy, your hair should be covered, and so on. These can be applied. It does not mean that only a person of that faith will follow those rules. As long as anybody is ready to follow those rules that are part of the job description they should get a fair chance at that job; it should not be restricted to persons of a certain faith only.

If we restrict general jobs based on religion many of the best schools are being run by religious organisations, best hospitals are being run by religious organisations, best charities are being run by religious organisations and our community, our people are working in them and they are doing a good job. There are no Hindu hospitals, no Hindu schools, no Hindu charities and that is because we are a newbie religion. We have arrived more recently and we do not have the same infrastructure and we are struggling to have enough temples and priests to guide our community at this stage. Maybe 50 years down the line we will have something. By creating this restriction that a person of a certain faith is suitable for a job we are creating a new kind of apartheid which is not based on race but is based on religion. If I am a social care worker who looks after older people, 90 per cent of the organisations will not employ me because I do not belong to that faith. That is my submission.

The Hon. MARK LATHAM: It was hard to pick up the name of the witness, but I want to check what the chap from the Lebanese Muslim Association said.

The CHAIR: That is Mr Hawila.

The Hon. MARK LATHAM: Did he say earlier on that the bill protects certain kinds of religious speech but not others, and if he did say that where does it say that in the bill?

Mr HAWILA: I do not recall using those words. What I would have said is that the Act in its current form does not protect all faith groups and the bill will protect those faith groups who are not included, save for the anti-vilification protections. I think that is the extent of my evidence, unless you can guide me otherwise.

The Hon. MARK LATHAM: I must have misheard. That has nothing to do with our decisions. It does not go to the speech issues. I must have misheard. Thank you.

The CHAIR: Gentlemen, I thank you very much for your evidence today and your deeply personal but incredibly helpful sharing with us of your experience of living in New South Wales. I thank you for that. You did not have to go to that extent but we do welcome it. Thank you very much for taking us into your confidence. You have taken questions on notice and you will receive a corrected transcript to assist you in answering those questions. You are not compelled to answer questions that have been raised with you in this forum. We do encourage it as it would be helpful to our deliberations. There may be supplementary questions from members after we have closed the hearing and the same rule applies to those questions.

(The witnesses withdrew.)

The Committee adjourned at 13:27.