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## Chapter 6

### Statements of belief

6.1 This Chapter outlines the key issues raised by submitters and witnesses to the inquiry in relation to statements of belief. It looks in particular at clause 12 of the bill (regarding statements of belief) and clause 15 (regarding qualifying body conduct rules). A number of faith-based groups and organisations strongly supported the inclusion of provisions to better protect statements of genuinely held religious belief. However, a number of other groups and organisations were strongly critical of these provisions, particularly of existing anti-discrimination laws being overridden. This Chapter sets out the views provided by submitters and witnesses as to these issues, and looks in detail at:

- the interaction of the statement of belief clause with existing discrimination law;
- the scope of clause 12;
- the potential impact on particular groups, including people with disability; women; LGBTIQ+ people; on race; on people of faith; in accessing health care; and in the workplace;
- how the defence of a statement of belief will impact on the resolution of discrimination complaints; and
- clause 15 and the qualifying body rules.

6.2 It concludes with an assessment of the application of international human rights law to these provisions and provides the committee's view and recommendations.

#### Protection of statements of belief

6.3 The bill provides that a statement of belief, in and of itself, does not constitute discrimination for the purposes of a number of listed anti-discrimination legislation, and does not contravene a Tasmanian law prohibiting certain conduct,<sup>1</sup> or any law prescribed by the regulations.<sup>2</sup> A statement of belief is a religious belief (or a belief held by someone who does not hold a religious belief), made in good faith, which the person genuinely considers to be in accordance with the doctrines, tenets, beliefs or teachings of that religion (or of the fact of not holding a religion).<sup>3</sup> It does not apply to a statement of belief that is malicious; that a reasonable person would consider would threaten, intimidate, harass or vilify a person or group; or where a person is

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1 *Anti-Discrimination Act 1998* (Tas), subsection 17(1).

2 Religious Discrimination Bill 2021, clause 12.

3 Religious Discrimination Bill 2021, clause 5, definition of 'statement of belief'.

counselling, promoting etc the commission of a serious offence.<sup>4</sup> A number of submitters and witnesses supported the inclusion of clause 12 and were of the view that statements of belief, as manifestations of religion, required greater protection. Amongst this group it was generally submitted that clause 12 was needed in order to ensure that religious people could freely profess their faith without fear of complaints being made against them.<sup>5</sup>

6.4 For example, Associate Professor Mark Fowler characterised the protection contained in clause 12 as 'a shield against discriminatory complaints against "moderately" expressed religious views, not a sword'. He submitted that it may be:

seen as an exercise attempting to conserve the tolerant approach to religious discourse that has long been characteristic of our open and liberal democracy and operates in with neutrality between religious and non-religious worldviews in a manner that is consistent with international law'.<sup>6</sup>

6.5 Reverend Doctor John McClean, Convenor, Church and Nation Committee, Presbyterian Church of Australia explained why he considered it necessary to protect statements of religious belief:

I think it also goes to the character of religion that, by its nature, religion requires statements and expression, and so it's appropriate that that be protected particularly in the area of religion; whereas, obviously, in disability discrimination the concerns are about access to services, access to buildings. So, to realistically protect freedom of religion, expression—both expression in action and expression in statement—is inherent and intrinsic to the character of what religion is.<sup>7</sup>

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4 Religious Discrimination Bill 2021, subclause 12(2).

5 Dr Alex Deagon, *Submission 3*, p. 18; Dr Russell Blackford, *Submission 7*, p. 3; Freedom for Faith, *Submission 10*, p. 10; Dr Denis Dragovic, *Submission 18*; Executive Council of the Australian Jewry, *Submission 19*, p. 8; Associate Professor Mark Fowler, *Submission 20*, p. 23; Australian Association of Christian Schools, *Submission 23*, p. 11; Australian Christian Higher Education Alliance, *Submission 25*, p. 6; Human Rights Law Alliance, *Submission 30*, p. 10; Christian Education National, Tasmania, *Submission 41*, p. 2; Australian Christian Churches, *Submission 63*, p. 5; Associated Christian Schools, *Submission 74*, p. 2; Catholic Women's League of Victoria and Wagga Wagga, *Submission 87*, p. 2; Presbyterian Church of Australia, *Submission 94*, p. 8; Islamic Council of Victoria, *Submission 111*, p. 4; Australia/Israel & Jewish Affairs Council, *Submission 119*, p. 7; Presbyterian Church of Victoria, *Submission 133*, p. 3; The Anglican Church Diocese of Sydney, *Submission 158*, p. 11; Christian Media and Arts Australia Limited, *Submission 163*, p. 7; Catholic Women's League Australia Inc., *Submission 175*, p. 1; Australian Catholics Bishops Conference, *Submission 185*, p. 10; Australian Muslim Advocacy Network, *Submission 93*, p. 11.

6 Associate Professor Mark Fowler, *Submission 20*, p. 4.

7 Reverend Doctor John McClean, Presbyterian Church of Australia, *Committee Hansard*, 13 January 2022, p. 42.

6.6 The Presbyterian Church of Australia also noted that 'very few good faith statements of religious faith could be fairly construed as discriminatory'.<sup>8</sup> Similarly, Right Reverend Doctor Michael Stead, Bishop of South Sydney, Anglican Church Diocese of Sydney, while supporting clause 12 noted:

we don't think the first part of clause 12 is actually doing anything new because any statement that is not malicious, not vilifying and not all those other things is not going to be discrimination. To the question of whether it's a sword or a shield, my question would be: are there examples of Christians who are currently saying things which have been found to be discrimination that the bill is now going to permit? And the answer is no. I've trawled through every judgement I can find and I can't find any example of somebody having made a genuine good-faith statement of belief that has been held to be discrimination under any state or federal act which would therefore be permitted by clause 12. Why clause 12 is important is because of the places where it has been used, where other antidiscrimination law has been used as a sword against statements of belief—and I'm thinking particularly of section 17 of the Tasmanian antidiscrimination legislation. So we don't want clause 12 because it's a sword for us against others; it's a shield against the overreach of insult and offend laws in other jurisdictions.<sup>9</sup>

6.7 The Islamic Council of Victoria considered the statement of belief clause is vital to securing the right to religious freedoms for all Australians:

The freedom to express religious beliefs without fear is a hallmark of a free democracy affording equality to all. Muslims, as a religious group, overwhelmingly support and wish to see enacted legislation which confers unto them the right to express their religious views, a core component of our faith, without fear of discrimination.<sup>10</sup>

6.8 The Australia/Israel & Jewish Affairs Council (AIJAC) argued:

In Australia, religious-based bodies should be legally protected to publish the beliefs on which they were established or operate. Similarly, individuals should be able to exercise their right to express their religious beliefs. So many of the world's religions – Judaism included – are based on making the world a better place, caring for those less fortunate and loving your neighbour as yourself, so it must be said that, in general, these statements strengthen our communities and enrich our lives.

6.9 In the limited examples where these statements do not contribute to community cohesion or may be unpleasant to those who don't share that faith, a responsibility exists for those with genuinely held religious beliefs to cause no harm, or at the very least, to minimise the harm caused by expressing their beliefs. AIJAC

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8 Presbyterian Church of Australia, *Submission 94*, p. 8.

9 Right Reverend Doctor Michael Stead, Anglican Church Diocese of Sydney, *Committee Hansard*, 13 January 2022, p. 49.

10 Islamic Council of Victoria, *Submission 111*, p. 4.

acknowledges that clause 12 of the Religious Discrimination Bill seeks to strike this balance.<sup>11</sup> Further, in the committee's survey in relation to the bill, 68 per cent of respondents said they did not believe religious people would be comfortable to share their beliefs in public life without the Religious Discrimination Bill 2021, and 97 per cent considered it should be lawful for a person to make a statement of belief so long as it is made in good faith and is not malicious, threatening, intimidating, or harassing and does not vilify a person or group or advocate the commission of a serious offence.<sup>12</sup>

6.10 Some submitters and witnesses also noted that this clause also protects non-religious statements of belief and in this way does not elevate religious speech above non-religious speech.<sup>13</sup> Professor Nicholas Aroney submitted:

I don't think it prioritises religious speech, if that is meant by 'prioritises the speech of people who hold religious beliefs' but it does focus on speech which is about religion, whether it is by somebody who holds religious belief or somebody who does not hold religious belief, and it appears that the reason for that is that this is a bill directed at or addressing religious discrimination. So, in that sense, its subject matter is religion, and it's intended to protect people of religious faith and those who have no religious faith, because that freedom is a freedom not just of religion but of belief as well.<sup>14</sup>

6.11 On this issue, the Attorney-General's Department stated that clause 12 'equally protects the expression of atheist and agnostic beliefs, as well as religious beliefs'.<sup>15</sup>

6.12 Conversely, a number of submitters and witnesses argued that clause 12 was not necessary, likely to be divisive and should be removed from the bill. Specific concerns raised by these submitters are set out in further detail below. Amongst this group it was felt that clause 12 seeks to elevate religious speech above other rights which was not appropriate in a secular society and unduly imposed on the rights of other people.<sup>16</sup> Submitters and witnesses stated that the clause does not protect

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11 Australia/Israel & Jewish Affairs Council, *Submission 119*, p. 7.

12 See Survey Questions and sample of responses, Appendix 4, questions 8 and 9.

13 Associate Professor Mark Fowler, *Committee Hansard*, 21 December 2021, pp. 5-6; Australian Christian Churches, *Submission 63*, p. 3.

14 Professor Nicholas Aroney, *Committee Hansard*, 21 December 2021, p. 7.

15 Attorney-General's Department, *Submission 191*, p. 11.

16 Law Council Australia, *Submission 28*, p. 10; Australian Discrimination Law Experts Group, *Submission 33*, p. 9; Dr Bruce Baer Arnold, *Submission 43*, p. 4; Humanists Australia, *Submission 98*, p. 4; LGBTI Legal Service Inc, *Submission 161*, pp. 2-3; Australian Lawyers for Human Rights, *Submission 171*, pp. 9-10; NSW Council for Civil Liberties, *Submission 181*, p. 8; Mr Corey Irlam, Council of the Ageing Australia, *Committee Hansard*, 21 December 2021, p. 45.

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religious and non-religious statements equally.<sup>17</sup> Equal Opportunity Tasmania submitted:

For a person who is not religious, for them to be protected they must have made a statement that they genuinely consider to relate to the fact of not holding a religious belief. For a person who is religious, the statement can be about anything, so long as they genuinely consider it to be in accordance with their religion (which would be a subjective test). This has the effect of creating unequal rights and privileging religious speech over other speech.<sup>18</sup>

6.13 Some submitters argued that, by elevating religious speech above other human rights, this clause goes against the objects of the bill itself as it is not in line with Australia's international obligations with respect to freedom of religion and freedom of expression, and to the indivisibility and universality of human rights.<sup>19</sup> The application of international human rights law to these provisions is set out below.

6.14 A number of submitters also argued that religious people can currently express their faith, to the extent that it does not interfere with anti-discrimination law as it exists now, and therefore there is no need for this clause.<sup>20</sup> The Australian Human Rights Commission stated that moderate statements of religious belief can already be made and therefore this clause does not address an existing legal concern. The Australian Human Rights Commission further commented:

In our written submissions we certainly do recognise the importance of symbolism here and the importance of ensuring that people do have that reassurance that they are able to make moderately expressed statements of religious belief and faith. In our view, the best way to provide that reassurance isn't through clause 12, which, in our view, has a range of unintended consequences and impacts on other rights and freedoms; rather, as we've noted in the submission, it is through the protection that is provided by adding in protection against discrimination for religious belief and faith. In addition, there is the recommendation we've made, recommendation 2, in which we ask the Attorney-General's Department to engage with equivalent departments at state and territory levels to look at the way state and territory tribunals deal with vexatious or unmeritorious

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17 Equality Australia, *Submission 31*, p.13; Associate Professor Luke Beck, *Submission 38*, pp. 4-5; Rationalist Society of Australia, *Submission 42*, p. 2; Youth Affairs Council of Western Australia, *Submission 155*, p. 8; Amnesty International Australia, *Submission 157*, p. 14.

18 Equal Opportunity Tasmania, *Submission 56*, p. 11. See also Ms Robin Banks, Australian Law Discrimination Experts Group, *Committee Hansard*, 21 December 2021, p. 12.

19 Australian Human Rights Commission, *Submission 97*, p. 18, NSW Council for Civil Liberties, *Submission 181*, p. 8.

20 Dr Renae Barker, *Submission 6*, p. 7; Public Affairs Commission of the Anglican Church of Australia, *Submission 78*, p. 3; Australian Human Rights Commission, *Submission 97*, p. 17; Human Rights Law Centre, *Submission 190*, p. 17.

complaints. That provides a level of protection and reassurance that we think is probably a better way to go about it.<sup>21</sup>

6.15 Dr Carolyn Tan, Chairperson of the Public Affairs Commission of the Anglican Church of Australia, argued that 'if in fact clause 12 doesn't do anything useful it's better to take it out, because it only causes greater division'.<sup>22</sup>

6.16 As to the purpose of clause 12, the Attorney-General's Department gave evidence that it 'clarifies the existing operation of anti-discrimination laws'.<sup>23</sup> More specifically, it stated:

This clause is intended to protect the ability of individuals to explain, discuss, share and express their fundamental beliefs. Religion is a fundamental part of Australia's strong and diverse social fabric. A person's religious belief, or lack of belief, is of significance to their identity, sense of self and the manner in which they live their life. The Government is of the view that it is appropriate for this Bill to clarify the ability of people of faith to express their religious beliefs in good faith.<sup>24</sup>

### **Interaction with existing discrimination law**

6.17 A key issue raised by submitters and witnesses is that clause 12 overrides existing federal, state and territory anti-discrimination legislation, as well as any other provisions of a law prescribed by the regulations. Some submitters and witnesses commented that the overriding of other anti-discrimination legislation was an appropriate balancing of rights to ensure the freedom to share religious beliefs.<sup>25</sup> Some submitters also emphasised that clause 12 operated as a shield to allow people to express their faith, rather than a sword to harm others.<sup>26</sup> For example, Mr John Steenhof, Principal Lawyer, Human Rights Law Alliance gave evidence:

I have been quite surprised by the opposition to [clause 12] around statements of belief. The hypothetical examples that have been raised, to my mind, have been quite incredible and certainly not warranted under that clause. Indeed, it provides very, very limited protection for statements of

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21 Ms Lorraine Finlay, Australian Human Rights Commission, *Committee Hansard*, 14 January 2022, p. 26.

22 Dr Carolyn Tan, Chairperson of the Public Affairs Commission of the Anglican Church of Australia, *Committee Hansard*, 13 January 2022, p. 49.

23 Attorney-General's Department, answer to question on notice, 22008, 14 January 2022 (received 21 January 2022).

24 Attorney-General's Department, answer to written question on notice, question 8 (received 11 January 2022). See also Attorney-General's Department, *Submission 191*, p. 11.

25 Christian Media and Arts Australia Limited, *Submission 163*, p. 7.

26 See, e.g., Mrs Wendy Francis, Australian Christian Lobby, *Committee Hansard*, 21 December 2021, p. 22; Right Reverend Doctor Michael Stead, Anglican Church Diocese of Sydney, *Committee Hansard*, 13 January 2022, p. 49; Associate Professor Mark Fowler, *Submission 20*, p. 4.

belief, and that's in two ways. Firstly, what qualifies as a statement of belief that will get protection has to be a very reasonable, very banal statement which is not causing ridicule or harassment to another person, which does not threaten or demean that person and which is a genuine statement of someone's sincerely held religious beliefs. So there's a very narrow category of statements that are even going to qualify to come under that clause.

Secondly, the scope of that clause's application is very, very narrow...So when I look at the clause, when I look at the narrow definition of 'statements of belief', when I look at its narrow application across the states and territories, it just doesn't compute with some of the statements that have been made in advertisements and in campaigns about the bill to suggest this is going to allow people to make fire and-brimstone pronouncements without penalty.<sup>27</sup>

6.18 The Anglican Church Diocese of Sydney also stated that clause 12 'should be understood as nothing more than a provision "for the avoidance of doubt", not as a provision that "takes away existing anti-discrimination protections"'.<sup>28</sup>

6.19 Other submitters argued that overriding existing anti-discrimination legislation is an undue and unprecedented overstep into anti-discrimination protections.<sup>29</sup> They argued this would weaken anti-discrimination protections, and licence offensive statements and incidents of discriminatory and offensive behaviour towards people with particular protected attributes.<sup>30</sup> For example, Ms Anna Brown, Chief Executive Officer of Equality Australia, stated that:

I just think no discrimination protection should be overridden by any federal law. It's anathema to our democracy that state laws could be overridden in this way and that these hard-fought-for protections that have existed for decades, in many cases, could be unwound and overridden and undermined by this bill which purports to protect people of faith, but it does much more than that—sadly, at the expense of other groups.<sup>31</sup>

6.20 Similarly, the Law Council of Australia noted:

Clause 12 is highly unusual in that it seeks to override existing anti-discrimination laws at the Commonwealth, State and Territory level. This does not appear in other Commonwealth anti-discrimination laws which are

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27 Mr John Steenhof, Human Rights Law Alliance, *Committee Hansard*, 21 December 2021, p. 84.

28 Anglican Church Diocese of Sydney, *Submission 158*, p. 12.

29 Australian Lawyer Alliance, *Submission 2*, p. 8; Diversity Council of Australia, *Submission 13*, p. 12; Law Council of Australia, *Submission 28*, p. 35; Equality Australia, *Submission 31*, p. 19; Australian Lawyers for Human Rights, *Submission 171*, pp. 8-9.

30 Women's Health Tasmania, *Submission 39*, p. 5; Australian Health Promotion Organisation, *Submission 72*, p. 2; Equality Australia, *Submission 31*, p. 13; Legal Aid Queensland, *Submission 92*, p. 6.

31 Ms Anna Brown, Equality Australia, *Committee Hansard*, 21 December 2021, pp. 2-3.

generally intended to operate concurrently with State and Territory laws. Clause 12 stands alone in this respect.<sup>32</sup>

6.21 A related concern raised by submitters and witnesses was that in overriding anti-discrimination laws, clause 12 would create legal uncertainty and complexity. A number of submitters and witnesses proposed instead that a religious discrimination bill should be implemented in line with other anti-discrimination bills in order to protect people of faith in the same way as other protected attributes.<sup>33</sup>

6.22 Regarding the operation of clause 12 and its interaction with existing anti-discrimination law, the Attorney-General's Department submitted that it clarifies 'that a person should not be subjected to a discrimination complaint under any Commonwealth, state or territory anti-discrimination law simply for expressing their genuine religious beliefs in good faith'.<sup>34</sup> It stated:

Clause 12 provides a defence to a complaint of discrimination made under anti-discrimination law. It is, however, not intended to impact the meaning or interpretation of other anti-discrimination laws, or the tests of direct or indirect discrimination. This protection applies only to statements – it does not extend to conduct which may be discriminatory.<sup>35</sup>

6.23 The Attorney-General's Department submitted that, in practice, it was unlikely that a statement, in and of itself, would 'constitute the basis for a claim of discrimination without some other behaviour that would be either less favourable treatment (for direct discrimination) or a requirement to comply with a condition, requirement or practice that would disadvantage the person and was not reasonable (for indirect discrimination)'.<sup>36</sup> It further noted that clause 12 does not override the prohibition of sexual harassment or other harassment provisions in anti-discrimination law.<sup>37</sup>

### **Tasmanian anti-discrimination law**

6.24 Paragraph 12(1)(b) of the bill provides that a statement of belief, in and of itself, does not contravene subsection 17(1) of the Tasmanian *Anti-Discrimination Act 1998* (the 'Tasmanian law'). The Tasmanian law provides that a person must not engage in any conduct which 'offends, humiliates, intimidates, insults or ridicules another person' on the basis of a protected attribute, in circumstances 'in which a

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32 Law Council of Australia, *Committee Hansard*, 14 January 2022, p. 20.

33 See, e.g., Diversity Council of Australia, *Submission 13*, p. 8; Council of the Ageing Australia, *Submission 29*, p. 4.

34 Attorney-General's Department, *Submission 191*, p. 11. See also Attorney-General's Department, answer to question on notice, 22008, 14 January 2022 (received 21 January 2022).

35 Attorney-General's Department, *Submission 191*, p. 12.

36 Attorney-General's Department, *Submission 191*, p. 12.

37 Attorney-General's Department, *Submission 191*, p. 12.



reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated, intimidated, insulted or ridiculed'.<sup>38</sup> Some submitters and witnesses argued that overriding the Tasmanian law was appropriate since that law is too broad and stifles the expression of religious belief in public life.<sup>39</sup> For example, Associate Professor Neil Foster, Board Member, Freedom for Faith, noted that the Tasmanian law is beyond the sort of protection that is provided in other parts of discrimination law in Australia:

That legislation allows speech that is offensive to be unlawful. We see that bar as far too low. In fact, there are very plausible arguments to say that that Tasmanian legislation already is in some respects unconstitutional, as a prohibition on the freedom of political speech in Australia. So we think that this clarity from the Commonwealth—to say, 'Yes, that particular provision won't operate'—is sensible. We think that, rather than making people fight their way through to the High Court and deal with that, that particular piece of legislation ought to be limited by Commonwealth law.<sup>40</sup>

6.25 In particular, some submitters noted examples of cases brought under the Tasmanian law which they submit related to the ability of religious people to express 'traditional Catholic doctrines of marriage'.<sup>41</sup> In doing so, they noted that even if the complaints may not make it to the courts or tribunals, there is a cost involved in hiring lawyers to defend such claims.<sup>42</sup> Some submitters also argued that the Tasmanian law contravenes Australia's international obligations under the International Covenant on Civil and Political Rights.<sup>43</sup> Professor Nicholas Aroney stated:

When one examines the Tasmanian law that is in question, it is arguable and, I think, the case that the Tasmanian law does not align with those guidelines that are set out in the Rabat Plan of Action, so it's understandable why the Commonwealth might take the view that that specific law needs to be overruled in this specific respect to accord with Australia's obligation

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38 *Anti-Discrimination Act 1998* (Tasmania), Subsection 17(1)

39 Dr Alex Deagon, *Submission 3*, p. 5; Freedom for Faith, *Submission 10*, p. 9.

40 Associate Professor Neil Foster, Freedom for Faith, *Committee Hansard*, 14 January 2022, p. 14.

41 See Mrs Wendy Francis, Australian Christian Lobby, *Committee Hansard*, 21 December 2021, p. 19. See also Mr John Steenhof, Human Rights Law Alliance, *Committee Hansard*, 21 December 2021, p. 84; Dr Alex Deagon, *Submission 3*, p. 18; Australian Christian Churches, *Submission 63*, p. 3; Institute for Civil Society, *Submission 131*, p. 4; Institute of Public Affairs, *Submission 134*, p. 3; Anglican Church Diocese of Sydney, *Submission 158*, p. 12. However, in contrast see Mr Rodney Croome, President, Equality Tasmania, *Committee Hansard*, 14 January 2022, pp. 49–50.

42 See e.g. Reverend Doctor John McClean, Convenor, Church and Nation Committee, Presbyterian Church of Australia, *Committee Hansard*, 13 January 2022, p. 44.

43 See for example Anglican Church Diocese of Sydney, *Submission 158*, p. 12.

under article 19 of the international covenant to protect freedom of expression—in this instance, specifically in relation to religion.<sup>44</sup>

6.26 Conversely, other submitters and witnesses raised concerns with the weakening of protections that have been debated and legislated for in Tasmania.<sup>45</sup> Equal Opportunity Tasmania argued that section 17(1) is in reality not broad in scope, and is limited to particular kinds of conduct.<sup>46</sup> They submitted that the debate regarding exclusion of religious speech from section 17(1) had already been undertaken in Tasmania in 2017 and the Tasmanian Parliament had voted to maintain the protections as they are, and it would be wrong for the Commonwealth to now step in and override the democratic decision of the Tasmanian Parliament.<sup>47</sup>

6.27 For example, Mr Rodney Croome AM, President of Equality Tasmania, commented:

Given that the Tasmanian Supreme Court, as well as all three major political parties in Tasmania, as well as all of us, find that section 17(1) is a useful section and is not an impediment to freedom of speech or freedom of religion, I find it hard to understand why the Commonwealth, unbidden, wants to step in and override that section.<sup>48</sup>

6.28 Equality Australia noted that a defence already exists within the Tasmanian legislation and it was not clear why the government believes clause 12 would provide a better defence than the current one, specifically section 55 which 'allows the public expression of religious, political and other views, with the benefit that this defence can be raised in the context of a relatively informal, inexpensive and no-costs jurisdiction'.<sup>49</sup>

6.29 The Tasmanian Government also submitted that while it supports prohibiting discrimination on the grounds of religious belief, the Tasmanian Parliament had already considered amendments to their law (which were defeated in the Legislative Council). As such, it reiterated its concerns about invalidating the operation of the Tasmanian law:

the Tasmanian Government's view is that the Religious Discrimination legislative package as drafted would diminish the ability of the Tasmanian Anti-Discrimination Tribunal to deal with certain complaints and that, as a

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44 Professor Nicholas Aroney, *Committee Hansard*, 21 December 2021, p. 9.

45 Women's Health Tasmania, *Submission 39*, p. 6; Mr Dattaraj Mahambrey, Multicultural Council of Tasmania, *Committee Hansard*, 14 January 2022, p. 45.

46 Equal Opportunity Tasmania, *Submission 56*, p. 10.

47 See, e.g., Equal Opportunity Tasmania, *Submission 56*, p. 10.

48 Mr Rodney Croome AM, President, Equality Tasmania, *Committee Hansard*, 14 January 2022, p. 49.

49 Equality Australia, *Submission 31*, p. 19.

Government, we continue to strongly advocate for no weakening of our Anti-Discrimination laws.<sup>50</sup>

6.30 As to the reason for specifying subsection 17(1) of the *Tasmanian Anti-Discrimination Act*, the Attorney-General's Department submitted:

Tasmania is the only state or territory jurisdiction with a provision which operates to capture conduct in relation to protected attributes that a person may find offensive. This provision is specifically included in the scope of clause 12 given the broad scope and demonstrated ability of subsection 17(1) to affect freedom of religious expression.<sup>51</sup>

***Power to prescribe additional laws***

6.31 A number of submitters and witnesses also raised concern with paragraph 12(1)(c), which provides that statements of belief do not contravene a provision of any law prescribed by regulations. The explanatory memorandum states that this regulation making power 'provides flexibility and acts as a safeguard in the event that other Commonwealth, state or territory laws are considered to unreasonably limit freedom of expression'. It notes such regulations would be subject to disallowance, and this would ensure appropriate parliamentary scrutiny of any additional provisions.<sup>52</sup>

6.32 The Senate Standing Committee for the Scrutiny of Bills has raised concerns about significant matters, such as these, being left to delegated legislation.<sup>53</sup> Similarly, Associate Professor Luke Beck proposed that any legislation that overrides federal, state or territory laws, if it should be done at all, should be enacted by Parliament and not by executive decision.<sup>54</sup> Professor Rosalind Croucher, President of the Australian Human Rights Commission, similarly stated that provisions that override state and territory laws should be set out in the primary legislation.<sup>55</sup>

6.33 Some submitters raised concerns that this power could be used to override protections debated and legislated at the state and territory level, including new reforms to anti-discrimination law currently being considered in the Australian Capital Territory.<sup>56</sup> The Australian Lawyers Alliance submitted:

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50 Tasmanian Government, *Submission 178*, p. 2.

51 Attorney-General's Department, *Submission 191*, p. 12.

52 Religious Discrimination Bill 2021, explanatory memorandum, pp. 56–57.

53 See Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 1 of 2022* (4 February 2022) p. 58.

54 Associate Professor Luke Beck, *Submission 38*, p. 9.

55 Professor Rosalind Croucher, Australian Human Rights Commission, *Committee Hansard*, 14 January 2022, p 25.

56 ACT Government, *Submission 192*, p. 11.

There is no right of review for the affected state or territory, only the Commonwealth Parliament may disallow the regulations. It is arguable that the Minister's power to override state or territory laws is not appropriately circumscribed – being based only on their personal satisfaction that the law prevents religious educational institutions from giving preference to religious employees – and lacks adequate review.<sup>57</sup>

6.34 Some specific examples of concern include the power to override prohibitions on sexuality and gender identity conversion practices that have been introduced in Victoria, the Australian Capital Territory and Queensland.<sup>58</sup> Uniting Network Australia submitted:

We cannot support such a broad power being given to future Attorneys-General to override State and Territory laws that allow for seeming arbitrary powers of the Attorney-General to remove State and Territory legislation to provide protections for the people, often minorities in a community.

An Attorney-General could use this power to override State and Territory bans on the devastating and inhumane sexual orientation and gender identity conversion practices introduced in Victoria and the ACT, and partially in Queensland (only in health settings), with bans under consideration in other jurisdictions.<sup>59</sup>

6.35 Some submitters also raised the potential for this paragraph to be used to override section 18C of the *Racial Discrimination Act 1975*.<sup>60</sup> Professor Luke Beck stated that the Tasmanian law prohibits the very same conduct prohibited by section 18C, and so the 'override of the Tasmanian provision would really only be effective in practice if section 18C of the Racial Discrimination Act was also overridden'.<sup>61</sup> A number of witnesses commented that while it is possible to prescribe section 18C for the purposes of section 12(1)(c) of the bill, it is unlikely to occur in practice at this point in time, given the statements that have been made in the explanatory memorandum.<sup>62</sup> Some concerns were further raised that paragraph 12(1)(c) could be used to override work health and safety laws which make it unlawful to engage in or permit insulting, offensive, ridiculing or humiliating comments in the workplace.<sup>63</sup>

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57 Australian Lawyers Alliance, *Submission 2*, p. 5.

58 Public Interest Advocacy Centre, *Submission 40*, p. 6; Uniting Network Australia, *Submission 153*, pp. 17-18; Youth Affairs Council of Western Australia, *Submission 155*, p. 9; Equality Australia, *Submission 31*, p. 17.

59 Uniting Network Australia, *Submission 153*, pp. 17-18.

60 Mr Steenhof, Human Rights Law Alliance, *Committee Hansard*, 21 December 2021, p. 7.

61 Associate Professor Luke Beck, *Submission 38*, p. 10. See also Equality Tasmania, *Submission 198*, p. 17.

62 Emeritus Professor Rosalind Croucher, Australian Human Rights Commission, *Committee Hansard*, 14 January 2022, p. 25.

63 Associate Professor Luke Beck, *Submission 38*, p. 10.

6.36 In response to this matter, the Attorney-General's Department asserted that at the time of the public hearing on 14 January 2022, no proposals to list further provisions for the purposes of paragraph 12(1)(c) had been made.<sup>64</sup>

## Scope of clause 12

### ***Safeguards in subclause 12(2) – no malicious, vilifying etc statements***

6.37 A key issue raised by submitters and witnesses was the appropriateness of the safeguards in subclause 12(2). Subclause 12(2) provides that the override provisions in subclause 12(1) do not apply where a statement of belief is malicious; or where a reasonable person would consider the statement would threaten, intimidate, harass or vilify a person or group; or where a reasonable person, having regard to all the circumstances, would conclude the statement is counselling, promoting etc conduct that would constitute a serious offence.

6.38 A number of submitters and witnesses were of the view that these were important safeguards that helped ensure the statement of belief provisions would not unnecessarily limit the rights and freedoms of others.<sup>65</sup> Associate Professor Mark Fowler considered that the drafters of the bill 'built within clause 12 quite a series of rigorous tests to be satisfied by any statement' which with existing law around all of the concepts set out in subclause 12(2) will 'set quite stringent standards on statements that could be made'.<sup>66</sup> Archbishop Peter Comensoli, Chair, Bishops Commission for Life, Family and Public Engagement, Australian Catholic Bishops Conference also told the committee:

I want to say that having a statement of belief or faith is important and that that might be a protection, but I note most particularly that that's not a free-for-all reality. It's been couched in language of condition, such that statements are reasonable—and there's the question of the test of reasonableness in this regard... but also that statements cannot be vilifying or threatening and so on. So it's not as if a statement can be made willy-nilly or inappropriately and so on. It's a reasoned statement.<sup>67</sup>

6.39 Some suggested these provisions were necessary in order to ensure that public discussion and debate is not stifled,<sup>68</sup> for example the Catholic Women's League of Victoria & Wagga Wagga commented that:

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64 Mr Walter, Acting Deputy Secretary, Attorney-General's Department, *Committee Hansard*, 14 January 2022, p. 68.

65 Australian Christian Churches, *Submission 63*, p. 5; Islamic Council of Victoria, *Submission 111*, p. 4; Christian Media and Arts Australia Limited, *Submission 163*, p. 7.

66 Associate Professor Mark Fowler, *Committee Hansard*, 21 December 2021, p. 4.

67 Archbishop Peter Comensoli, Australian Catholic Bishops Conference, *Committee Hansard*, 13 January 2022, p. 23.

68 See for example, Russell Blackford, *Submission 7*, p. 5; Presbyterian Church of Australia, *Submission 94*, p. 9.

Allowing statements of belief by stating they are not discriminatory also encourages healthy debate – which our democracy needs to flourish. Malicious, threatening or deliberately intimidating actions are already covered by law and are not part of robust healthy debate.<sup>69</sup>

6.40 The Australia/Israel & Jewish Affairs Council submitted that these safeguards were appropriate, but noted that in addition to these legislative provisions, there is a role for community and political leaders to publicly call out statements that are disrespectful to other Australians in order to ensure people of faith did not make disparaging or disrespectful remarks to people who do not share their view.<sup>70</sup>

6.41 Dr Russell Blackford further suggested amending Note 1 to subclauses 12(2) and 15(3) to change the language from 'moderately expressed' religious beliefs to 'robustly expressed' religious beliefs to more accurately reflect the intention of the clauses.<sup>71</sup>

6.42 However, other submitters and witnesses raised concerns that the limitations in clause 12 were not enough to prevent real harm being felt by those subject to statements of belief. They noted that the limitations as they currently are do not prevent statements that can offend, humiliate, insult, ridicule or otherwise harm others and this can be incredibly damaging.<sup>72</sup>

6.43 It was further noted that unlike other discrimination law, the reasonableness test in subclause 12(2) (whether a reasonable person would consider the statement would threaten, intimidate, harass or vilify a person or group) focuses on the mindset of the person making the statement of belief, rather than the harm felt by those subject to the statement.<sup>73</sup> Some submitters argued that the inclusion of the

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69 Catholic Women's League of Victoria and Wagga Wagga, *Submission 87*, p. 2.

70 Australia/Israel & Jewish Affairs Council, *Submission 119*, pp. 7-8.

71 Dr Russell Blackford, *Submission 7*, p. 4.

72 Law Council of Australia, *Submission 28*, p. 37; Australian Education Union Federal Office, *Submission 21*, p. 5; Equality Australia, *Submission 31*, p. 15; Associate Professor Luke Beck, *Submission 38*, p. 9; Women's Health Tasmania, *Submission 39*, p.6; Public Interest Advocacy Centre, *Submission 40*, p. 4; Buddhist Council of NSW, *Submission 51*, p. 6; Public Affairs Commission of the Anglican Church of Australia, *Submission 78*, p. 3; Australian Medical Association *Submission 96*, p. 4; Dr Sean Mulcahy, *Submission 126*, p. 11; Uniting Church in Australia Assembly, *Submission 152*, p. 7; LGBTQ+ Health Australia, *Submission 156*, p. 8; Amnesty International, *Submission 157*, p. 14; Australian Association for Social Workers, *Submission 159*, p. 5; Equality Rights Alliance, *Submission 166*, p. 6; Women's Electoral Lobby, *Submission 188*, pp. 13–14.

73 Australian Council of Human Rights Authorities, *Submission 125*, p. 2; Uniting Network Australia, *Submission 153*, p. 14; Australian Association for Social Workers, *Submission 159*, p.5; Equality Rights Alliance, *Submission 166*, p. 6; Rainbodhi LGBTQIA+ Buddhist Community, *Submission 8*, pp. 6–7.

reasonableness test does not consider how a particular group may be impacted by particular statements.<sup>74</sup> The Human Rights Law Centre commented:

This is an objective test that doesn't allow for consideration of the background or experiences of the person or group targeted. Understanding the person or group targeted and "sociological context" in which their identity occurs is pertinent to whether a statement causes them to feel threatened, harassed, intimidated or vilified.<sup>75</sup>

6.44 Some submitters also raised concerns that paragraph 12(2)(c) only limits statements that encourage the commission of a *serious* criminal offence, rather than any offence against Australian law.<sup>76</sup>

6.45 A number of submitters also noted that it was unclear what speech would be allowed under clause 12,<sup>77</sup> and this uncertainty would need to be tested in the courts, which would be an expensive and difficult process.<sup>78</sup> Ms Robin Banks from the Australian Anti-Discrimination Law Experts Group gave evidence stating:

there is no guidance on who will be required to establish that the statement of belief falls within the permitted scope that it's good faith, that it's their belief. That is not difficult, I guess—the question of who determines that or proves that is one thing, but then who has got to prove that it's not vilifying, inciting or malicious? It's a defence to a defence, I think. This is where the complexity of these bills is really at the heart of many of the concerns. We've never seen anything like this, and there is no guidance on whether it will be up to the complainant in the discrimination complaint to prove that the statement of belief was made maliciously or whether it will be up to the person making the statement to prove that it wasn't. Proving maliciousness is extremely difficult, as far as I can see from case law. You have to show it was made with an intention to cause harm and that it was unfounded. I don't know how you prove a statement of belief is unfounded. That, in and of itself, is a difficult conundrum. There is no clarity of who has to prove it,

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74 Equality Australia, *Submission 31*, p. 15; Human Rights Law Centre, *Submission 190*, p. 16.

75 Human Rights Law Centre, *Submission 190*, p. 16.

76 Law Council Australia, *Submission 28*, p. 37; Australian Lawyers for Human Rights, *Submission 171*, p. 10; Equal Opportunity Tasmania, *Submission 56*, p. 11; Equal Opportunity Tasmania, *Submission 56*, p. 11.

77 Beyond Blue, *Submission 12*, p. 3; Diversity Council of Australia, *Submission 13*, p. 10; Australian Education Union Federal Office, *Submission 21*, p. 5; ACON, *Submission 34*, p. 6; Australia Council of Trade Unions, *Submission 64*, p. 11; Family Planning NSW, *Submission 88*, p. 4; Commissioner for Children and Young People SA, *Submission 120*, p. 3; The Satanic Temple Australia, *Submission 154*, p. 4; Australian Lawyers for Human Rights, *Submission 171*, pp. 9-10; NSW Council for Civil Liberties, *Submission 181*, p. 8.

78 See for example, Australian Lawyers for Human Rights, *Submission 171*, pp. 9–10.

and that is a huge gap in this legislation that makes it even more complex in case law terms.<sup>79</sup>

6.46 Ms Sophie Ismail, Legal and Industrial Officer, from the Australian Council of Trade Unions also stated that it is 'very unclear what the threshold of a malicious statement or a harassing statement is', noting that the provision does not prevent degrading, inappropriate, hostile or harmful statements. Ms Ismail was concerned that it would 'allow a free-for-all...in terms of what comments are allowed to be made under the banner of religion' and that the introduction of 'untested and new concepts...is going to create confusion and chaos in workplaces'.<sup>80</sup>

6.47 Further, some submitters and witnesses argued that clause 12 would ultimately protect statements that would currently be considered discrimination,<sup>81</sup> and many went further to argue that protecting statements of belief would encourage discriminatory language and conduct.<sup>82</sup> Concerns raised as to the potential impact of statements of belief on specific groups are discussed further below.

### **'Good faith' requirements and 'genuine belief'**

6.48 The definition of 'statement of belief' in clause 5 includes a subjective test for determining whether a statement is a statement of belief. Numerous submitters and witnesses commented on the subjective tests in subparagraphs 5(a)(ii) and (iii), whereby a person making a statement of belief must make the statement in 'good faith' and must 'genuinely' consider the belief to be in accordance with the doctrines, tenets, beliefs or teachings of their religion. Many of those in favour of introducing protections for statements of belief argued that these subjective tests are appropriate in order for people of faith to be able to express their beliefs and avoids the issue of debating differing theological beliefs within denominations.<sup>83</sup> Some submitters argued this also avoids the difficulty and inappropriateness of a judge needing to interpret

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79 Ms Robin Banks, Australian Anti-Discrimination Law Experts Group, *Committee Hansard*, 21 December 2021, p. 16.

80 Ms Sophie Ismail, Australian Council of Trade Unions, *Committee Hansard*, 14 January 2022, p. 6.

81 ACON, *Submission 34*, p. 6; Public Interest Advocacy Centre, *Submission 40*, p. 4; Buddhist Council of NSW, *Submission 51*, p. 6; Australian Human Rights Commission, *Submission 97*, p. 30; Women's Electoral Lobby, *Submission 188*, p. 12; Human Rights Law Centre, *Submission 190*, p. 17

82 Victorian Trades Hall Council, *Submission 11*, p. 1; Buddhist Council of NSW, *Submission 51*, p. 6; Equality Australia, *Submission 31*, p. 13; Youth Affairs Council of Western Australia, *Submission 155*, p. 7.

83 Australian Christian Higher Educational Alliance, *Submission 25*, p. 7; Associated Christian Schools, *Submission 74*, p. 2.



religious doctrine to determine if the statement conformed with that doctrine.<sup>84</sup> The Institute for Civil Society submitted:

This avoids dragging secular courts into determinations of what are the doctrines or beliefs of a religion for which they are ill-suited and the invidious outcome of a secular court telling a religious person or religious body that their religious beliefs are not part of the religion's doctrines as determined by the court.<sup>85</sup>

6.49 Nevertheless, some groups in favour of statements of belief were concerned about the subjectivity tests, notably that judges may be able to determine whether an individual's subjective beliefs are legitimate expressions of religious belief.<sup>86</sup> In addition, there was concern that judges may be able to apply their own discretion as to what constitutes a statement made in 'good faith'.<sup>87</sup>

6.50 Conversely, a number of submitters and witnesses argued that the 'genuine belief' and 'good faith' requirements were highly subjective. It was raised that the 'genuine belief' requirement could result in any range of statements being argued to be genuine religious beliefs, and it would be practically impossible to disprove whether a belief was genuine or not.<sup>88</sup> As explained by Ms Robin Banks of the Australian Discrimination Law Experts Group:

The way 'statement of belief' is defined...it has to be made in good faith. It is very hard to establish something not being made in good faith. Secondly, it permits a statement as long as the person considers it themselves to be in accordance with the doctrines et cetera of the religion. That's an entirely subjective test. We don't see tests of that nature in any other area of discrimination law. The test for harassment, the tests under section 17(1) and the test for discrimination in all discrimination laws in Australia are objective tests. This is an entirely subjective test because it's in the eyes of the person making the statement. I think it is impossible to establish that a statement of that sort is not being made in good faith. If the person believes it, they are making it in good faith.<sup>89</sup>

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84 Australian Association of Christian Schools, *Submission 23*, p. 11; Presbyterian Church of Australia, *Submission 94*, p. 8; Human Rights Law Alliance, *Submission 30*, pp. 9-10.

85 See for example, Institute for Civil Society, *Submission 131*, p. 4.

86 See for example, Australian Association of Christian Schools, *Submission 23*, p. 11.

87 See for example, Institute of Public Affairs, *Submission 134*, p. 3.

88 Australian Education Union Federal Office, *Submission 21*, p. 5; Australian Discrimination Law Experts Group, *Submission 33*, p. 7; Public Interest Advocacy Centre, *Submission 40*, p. 5; Just Equal Australia, *Submission 69*, p. 3; Queensland Advocacy Incorporated, *Submission 115*, p. 4; ACT Government, *Submission 192*, p. 9.

89 Ms Robin Banks, Australian Discrimination Law Experts Group, *Committee Hansard*, 21 December 2021, p. 13.

6.51 A number of submitters and witnesses raised concern that statements of belief could be used as a cover to make homophobic, racist, sexist or ableist remarks under the guise of religion.<sup>90</sup> It was also raised that, given the statutory construction of the definition of statement of belief, the 'good faith' requirement only pertains to the way in which a statement is made ('a statement must be made, in good faith, by written or spoken words'), and does not constrain the content of the statement itself.<sup>91</sup>

6.52 Nevertheless, the Attorney-General's Department was of the view that the 'good faith' requirement included objective elements as well as subjective considerations, noting:

a court is likely to apply a broad interpretation of the good faith requirement, encompassing both subjective considerations (the person making a statement of belief considers they are behaving honestly and with a legitimate purpose), as well as objective considerations (the person has taken a conscientious approach to honouring the values asserted by the Bill, which may include considering, and minimizing, the harm that may be caused by their speech given the overall purpose of the Bill) see *Bropho v Human Rights and Equal Opportunity Commission* (2004) 135 FCR 105.<sup>92</sup>

6.53 The Attorney-General's Department elaborated on the relevant findings in *Bropho*, stating that this case:

considered that 'good faith' required "honest action and fidelity" that may extend beyond mere compliance with "the black letter of the law" (at 131 [93]). The court considered that a person seeking to rely on the 'good faith' defence under section 18D of the Racial Discrimination Act 1975 must demonstrate that they are "subjectively honest, and objectively viewed, [have] taken a conscientious approach...in a way that is designed to minimise the offence or insult, humiliation or intimidation suffered by people affected by it" (at 133 [102]).<sup>93</sup>

6.54 At the committee's public hearing on 14 January 2022, Mr Andrew Walter, Acting Deputy Secretary, Integrity and International Group, Attorney-General's Department, gave further evidence regarding the good faith requirement, stating:

Good faith, in our reading, as a broad application has two aspects to it. The first aspect is that it's a kind of genuineness. You are genuinely making a belief or fidelity to that belief. The second goes to the conscientiousness and the circumstances in which you are actually making that statement, that

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90 See for example, Diversity Council Australia, *Submission 13*, p. 10.

91 Equality Australia, *Submission 31*, p. 16; Amnesty International Australia, *Submission 157*, p. 14.

92 Attorney-General's Department, *Submission 191*, p. 12.

93 Attorney General's Department, answer to question on notice, 22011, 14 January 2022 (received 2 February 2022), p. 1.

you're having regard to the circumstance of the person you're making the statement to and so forth.<sup>94</sup>

6.55 The Attorney-General's Department further submitted:

In accordance with general principles of anti-discrimination law, the department considers that the legal and evidential burden of proof for establishing all the elements in clause 12 (including showing that the exceptions in subclause 12(2) do not apply) rests with the respondent to a discrimination claim, as the party seeking to rely upon this defence.<sup>95</sup>

### Potential impact on particular groups

6.56 As stated, those who expressed support for the protection of statements of belief argued that the limitations within the clause itself were enough to prevent harm, and that allowing for statements of belief to be made would allow for a more tolerant and diverse society.<sup>96</sup> Some submitters also noted that the type of comments raised by groups opposing clause 12 would not currently constitute discrimination under most anti-discrimination laws, and therefore clause 12 would not have the effect that had been claimed.<sup>97</sup> Mr Mark Sneddon, Executive Director, Institute for Civil Society, submitted that clause 12 has attracted 'a vast amount of misinformation and criticism', noting that it only protects statements of belief from being discrimination under other anti-discrimination law or from complaints under the Tasmanian law or other prescribed laws:

It would not protect statements of belief from employer sanction. It does not protect statements of belief from being a breach of a contract of employment. It does not protect statements of belief from being contrary to a code of conduct by an employer. It will not protect statements of belief from regulation by professional bodies. So the suggestion the section 12 protects statements of belief and unbelief left alone, as if it protects them from every consequence and sanction, is completely wrong, and I think it misled a number of submitters.<sup>98</sup>

6.57 The Attorney-General's Department noted that it is difficult to respond to hypothetical examples as 'the application of anti-discrimination law can be dependent on the circumstances, context of the interaction or relationship of the parties'. It

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94 Mr Andrew Walter, Attorney-General's Department, *Committee Hansard*, 14 January 2022, p. 62.

95 Attorney General's Department, answer to question on notice, 22011, 14 January 2022 (received 2 February 2022), p. 1.

96 Australian Christian Churches, *Submission 63*, p. 5; Islamic Council of Victoria, *Submission 111*, p. 4; Christian Media and Arts Australia Limited, *Submission 163*, p. 7.

97 Right Reverend Doctor Michael Stead, Anglican Church Diocese of Sydney, *Committee Hansard*, 13 January 2022, p. 49.

98 Mr Mark Sneddon, Executive Director, Institute for Civil Society, *Committee Hansard*, 14 January 2022, p. 19.

further stated that 'repeated or insistent statements may amount to a course of conduct or may constitute harassment or, depending on the context, may be considered threatening by a person'. The department noted:

With that caveat in mind, the department considers that it would be difficult for a respondent to satisfy a court that a statement such as "disability is the work of the devil", made by a disability support worker in the context of a disability care relationship, was made in good faith and is not malicious.<sup>99</sup>

6.58 Conversely, the committee received a range of evidence regarding the potential negative impact clause 12 may have on various groups, including people with disabilities, women, LGBTIQ+ individuals, people of different races, single mothers, divorced people, de facto couples and people of different faiths. It was argued that words can, even unintentionally, cause real harm to people and create cultures and attitudes where hurtful behaviour is accepted, which in turn can lead to further harm.<sup>100</sup>

6.59 It was noted that many of the people likely to lose protection as a result of the overriding of existing anti-discrimination legislation are some of the most vulnerable in the community.<sup>101</sup> Further, protected statements may be particularly harmful to children and young people.<sup>102</sup> It was also noted that marginalised groups already deal with substantial pressures and frequent 'micro-aggressions' or repeated and cumulative statements, which are likely to not be deemed harassment or vilification (and so will be protected by clause 12), and which still impact on the wellbeing of those subject to such statements.<sup>103</sup> Legal Aid Queensland noted the impact this may have on participation in public life more broadly, and in seeking access for particular services:

the expression of harmful beliefs about people's protected attributes is detrimental to society, in that it reduces participation in public life, has serious negative mental health impacts, has a silencing effect on the most

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99 Attorney General's Department, answer to question on notice, 22002, 14 January 2022 (received 2 February 2022), p. 2.

100 Equality Rights Alliance, *Submission 166*, p. 7; Rainbodhi LGBTIQ+ Buddhist Community, *Submission 8*, p. 6; Mr Michael Douglas, *Submission 9*, p. 2; A Gender Agenda, *Submission 81*, p. 4; The Satanic Temple Australia, *Submission 154*, p. 5; Human Rights Law Centre, *Submission 190*, p. 17; Victorian State Government, *Submission 195*, p. 5.

101 Australian Education Union Federal Office, *Submission 21*, p. 5; Ethnic Council of Shepparton and District Inc., *Submission 66*, p. 2; National Secular Lobby, *Submission 129*, p. 3; Uniting Church in Australia Assembly, *Submission 152*, p. 7; Australian Association for Social Workers, *Submission 159*, p. 5; Australian Lawyers for Human Rights, *Submission 171*, p. 9; NSW Council for Civil Liberties, *Submission 181*, p. 6; Women's Electoral Lobby, *Submission 188*, p. 3.

102 Commissioner for Children and Young People SA, *Submission 120*, p. 4; Mr Michael Douglas, *Submission 9*, p. 2; Youth Pride Network, *Submission 124*, p. 5

103 Amnesty International Australia, *Submission 157*, p. 15.

vulnerable, inhibits access to services, reduces the capacity of people to engage with and contribute to society, and threatens social harmony.<sup>104</sup>

### **People with disability**

6.60 A number of submitters commented on the high level of discrimination faced by people with disabilities. Data from Equal Opportunity Tasmania reflected that the majority of discrimination complaints received are from people with a disability.<sup>105</sup> Concerns were raised that allowing for statements of belief will substantially impact this group, including people with psychosocial disabilities,<sup>106</sup> and will provide an avenue for harmful and demeaning comments under the guise of religion. For example, Disability Voices Tasmania noted:

People with disability constantly experience ridicule, offensive assumptions, bias, and intimidation. It does not matter whether this arises from hate, prejudice, misguided assumptions, and attitudes towards disability, or because of religious belief – or one person’s interpretation of religious belief. What matters is the hurt, humiliation, and long-term impact we experience as a result of it.<sup>107</sup>

6.61 Conversely, the Australian Christian Lobby rejected the assertion that the bill would discriminate against other groups, including people with disability:

Again, the religious organisations that look after disabled people—it's largely religious organisations that have been set up to do that, and there's no way that this bill will change any existing protections against discrimination on the grounds of disability at all. This bill is just looking at protecting religious people. This is not actually changing any of the other discrimination acts at all.<sup>108</sup>

### **Women**

6.62 A number of submitters and witnesses commented on the potential negative implications for women of clause 12, given many religions hold particular positions on the role of women in the family and in society.<sup>109</sup> In particular, it was argued that harm and retrogressive steps for gender equality could be caused by these views originating from religious teachings.<sup>110</sup>

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104 Legal Aid Queensland, *Submission 92*, p. 7.

105 Equal Opportunity Tasmania, *Submission 56*, p. 5.

106 Queensland Advocacy Incorporated, *Submission 115*, p. 4.

107 Disability Voices Tasmania, *Submission 68*, pp. 2-3.

108 Mrs Wendy Francis, Australian Christian Lobby, *Committee Hansard*, 21 December 2021, p. 20.

109 Feminist Legal Clinic Inc, *Submission 45*, p. 1; Harmony Alliance, *Submission 106*, p. 2; Women’s Electoral Lobby, *Submission 188*, p. 12.

110 Women’s Health Victoria, *Submission 173*, p. 4.

6.63 Examples were provided to the committee where it was argued that the protection of statements of belief would have negative effects on those experiencing domestic violence, accessing contraception and health services, and accessing disability services. Equality Rights Alliance commented:

In its current form, the Bill is capable of providing protection to people who express views which contribute to sexist cultures in workplaces and in public through the provision of goods and services. The effect of 'moderately expressed' negative views on the ability of marginalised people to break barriers to equality is well documented, but 'benevolent' or 'friendly' statements will not be caught by s. 12(2). Benevolent sexism is a key reinforcing factor in cultures which are unsupportive to gender equality... The most concerning element of benevolent sexism is that its effects are slow but deep, like the dripping of water on stone. Regular, low-level reiteration of well-intentioned sexism wears away at an individual's ability to envisage and implement change. For an individual in a workplace or seeking access to goods and services, tackling deliberately hostile sexism is difficult enough, but tackling benevolent sexism requires a high level of insight, energy and perseverance, a job that will be made significantly harder under this Bill if the sexism is expressed as a religious belief and is therefore protected.<sup>111</sup>

### **LGBTIQ+ individuals**

6.64 The potential impacts of clause 12 on LGBTIQ+ individuals was raised by a number of submitters and witnesses, who noted that many religions hold that homosexuality is wrong. Further, allowing for statements of belief in relation to LGBTIQ+ people, will exacerbate the already high rates of poor mental health and suicide attempts amongst this group.<sup>112</sup> As an example of harmful statements, some submitters argued that the Australian postal marriage survey caused significant distress and harm to this community particularly from the 'no' campaign messaging.<sup>113</sup> Youth Pride Network submitted:

By explicitly allowing statements that otherwise would be discriminatory, YPN believes this provision will serve to increase the amount of discriminatory statements that LGBTIQ+ young people experience on a day to day basis. Particularly we are concerned about how this provision will disempower LGBTIQ+ young people to address discrimination they experience in their educational institutions, their workplaces and any services they may access...By allowing statements that would otherwise

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111 Equality Rights Alliance, *Submission 166*, p. 7.

112 Australian Education Union Federal Office, *Submission 21*, p. 5; Australian Health Promotion Association, *Submission 72*, p. 1; Human Rights Law Centre, *Submission 190*, p. 17.

113 Australian Education Union Federal Office, *Submission 21*, p. 5; ACON, *Submission 34*, pp. 6-7.

breach discrimination law, the proposed Bill will likely have an incredibly detrimental impact on the mental health of LGBTIQ+ young people.<sup>114</sup>

6.65 Concerns were also raised that allowing for statements of belief would in effect allow for gender and sexuality conversion practices, even though they have been prohibited in the ACT, Victoria and in Queensland.<sup>115</sup> Mr Croome AM, President, Equality Tasmania, stated that:

In states that have taken legislative action on this issue [of conversion practices]—Queensland, the ACT and, in particular, Victoria—there are provisions which deal with the kinds of statements that are consistent with conversion ideology and which would inflict deep damage on people who are pushed into undertaking those conversion practices.<sup>116</sup>

### **Race discrimination law**

6.66 Concerns were also raised regarding the protection of statements of belief overriding race discrimination law and the negative implications of racist statements, which particularly affect certain religious groups. In particular, concerns were raised about statements of belief overriding the *Racial Discrimination Act 1975*. The Public Interest Advocacy Centre commented:

For 46 years, the *Racial Discrimination Act 1975* (Cth) has operated without religious exceptions, on the accepted premise that religious beliefs do not justify racism. The Religious Discrimination Bill undermines that foundation, introducing de facto ‘religious exceptions’ into the Act for the first time, for the purpose of protecting harmful speech.<sup>117</sup>

6.67 Uniting Network of Australia raised concern that racist comments would be protected under the bill:

A white supremacist or neo-Nazi would be protected under these bills when they made demeaning and derogatory comments about people of other races if they genuinely (but unreasonably) considered those comments formed part of their faith.<sup>118</sup>

6.68 However, others argued that given the limitations within clause 12 this would not occur. The Executive Council of Australian Jewry, for example, noted that the anti-vilification and racial hatred provisions in the *Racial Discrimination Act 1975* would not be overridden by clause 12 and thus would continue to offer protection to the Jewish

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114 Youth Pride Network, *Submission 124*, pp. 5-6.

115 ACON, *Submission 34*, pp. 8-9; Australian GLBTIQ Multicultural Council, *Submission 80*, p. 3; Amnesty International Australia, *Submission 157*, p. 20; Transgender Victoria, *Submission 112*, p. 2; Youth Pride Network, *Submission 124*, p. 12.

116 Mr Rodney Croome, President, Equality Tasmania, *Committee Hansard*, 14 January 2022, p. 49.

117 Public Interest Advocacy Centre, *Submission 40*, p. 6.

118 Uniting Network Australia, *Submission 153*, p. 14.

community.<sup>119</sup> While acknowledging that under paragraph 12(1)(c) an anti-vilification or racial hatred provision of the *Racial Discrimination Act 1975* could be prescribed by the regulations for the purposes of clause 12, the Executive Council of Australian Jewry were of the view that this was unlikely to occur given the statement in the explanatory memorandum that clause 12 does not apply to harassment, vilification or incitement provisions under anti-discrimination laws.<sup>120</sup>

6.69 The Attorney-General's Department provided some guidance as to the types of behaviour that could constitute vilification for the purposes of subclause 12(2), including speaking about a person's race or religion in a way that could make other people hate or ridicule them; repeated or serious spoken or physical abuse about the race or religion of another person; encouraging violence against people of a particular race or faith; and encouraging people to hate a racial or religious group using different forms of speech and communication.<sup>121</sup>

### **People of faith**

6.70 It was also submitted that the impact of the bill extends to increasing the potential for discrimination against people on the basis of their religion, as clause 12 protects derogatory or demeaning statements by other people of faith, and this will increase the risk of harm towards people of different faiths or minority religions.<sup>122</sup> For example, the Public Interest Advocacy Centre commented that minority religious groups, atheists and agnostics may be 'subjected to harmful religiously-motivated comments on the basis of who they are', including antisemitic and Islamophobic comments, which are currently prohibited under State and Territory anti-discrimination laws.<sup>123</sup>

6.71 However, as noted above, many religious groups were supportive of this provision. For example, the Australia/Israel & Jewish Affairs Council noted that '[s]o many of the world's religions – Judaism included – are based on making the world a better place, caring for those less fortunate and loving your neighbour as yourself' and so most statements 'strengthen communities and enrich lives', and in the limited examples where statements do not contribute to community cohesion clause 12 seeks to strike the right balance.<sup>124</sup>

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119 Mr Peter Wertheim, Executive Council of Australian Jewry, *Committee Hansard*, 21 December 2021, p. 52.

120 Mr Peter Wertheim, Executive Council of Australian Jewry, *Committee Hansard*, 21 December 2021, p. 57; Religious Discrimination Bill 2021, explanatory memorandum, p. 56.

121 Attorney-General's Department, answer to written question on notice, question 12 (received 11 January 2022).

122 Australian Education Union Federal Office, *Submission 21*, p. 6; Uniting Church in Australia Assembly, *Submission 152*, p. 8; Buddhist Council of NSW, *Submission 51*, p. 6.

123 Public Interest Advocacy Centre, *Submission 40*, p. 4.

124 Australia/Israel & Jewish Affairs Council, *Submission 119*, p. 7.



### **Accessing health care**

6.72 In the health context, a number of submitters argued that where health professionals make statements of belief that negatively impact on individuals of a particular group, those individuals are likely to feel unwelcome and may not feel like they will receive appropriate and adequate health care, or will be judged while receiving care.<sup>125</sup> It was submitted that this is likely to lead to individuals not seeking or delaying care, and in turn will lead to poor physical and mental health outcomes.<sup>126</sup> Submitters argued that this may be particularly difficult for those accessing essential disability support services as these are often provided by faith-based organisations,<sup>127</sup> and may be an issue for individuals entering aged care and fearing discrimination.<sup>128</sup> It was also raised that these issues are heightened in small communities, and regional or remote areas where it may be difficult or impossible to seek alternative care.<sup>129</sup> The Centre for Women's Safety and Wellbeing commented:

When discrimination occurs, it places the physical, mental, and emotional wellbeing of the individual(s) at risk. In health and community services settings, discrimination can exacerbate the presenting issue, can compound existing issues, and can cause new conditions to develop. The Bill has the potential to reduce access to timely, appropriate, and safe services; deter or prevent individuals from seeking services due to fear of experiencing discrimination; and cause additional negative health and wellbeing impacts. It is important to acknowledge that these consequences of the Bill will disproportionately impact marginalised women who experience intersecting forms of disadvantage, including women with disability, young women, LGBTIQ+ people, Aboriginal and Torres Strait Islander women, culturally and linguistically diverse women, and women in regional, rural and remote areas.<sup>130</sup>

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125 ACON, *Submission 34*, p. 8; Professor Danielle Mazza and Professor Heather Douglas, *Submission 75*, p. 2.

126 Family Planning NSW, *Submission 88*, p. 4; LGBTQ+ Health Australia, *Submission 156*, p. 7; Amnesty International Australia, *Submission 157*, p. 16; Women's Health Victoria, *Submission 173*, p. 4; Rainbow Territory, *Submission 193*, p. 2.

127 Queensland Advocacy Incorporated, *Submission 115*, p. 5; A coalition of disability advocacy organisations, *Submission 167*, p. 2.

128 Mr Corey Irlam, Council of the Ageing Australia, *Committee Hansard*, 21 December 2021, pp. 46 and 50.

129 Queensland Centre for Intellectual and Developmental Disability, *Submission 164*, p. 3; Health Services Union, *Submission 15*, p. 9; ACON, *Submission 34*, p. 8; Uniting Network Australia, *Submission 153*, p. 16; Amnesty International Australia, *Submission 157*, p. 17; Marie Stopes Australia, *Submission 177*, p. 5; Rainbow Territory, *Submission 193*, p. 2.

130 Centre for Women's Safety and Wellbeing, *Submission 179*, p. 3

### **Statements of belief in the workplace**

6.73 A number of submitters expressed confusion regarding the practical operation of statements of belief in the workplace context.<sup>131</sup> While clause 15 operates to provide the circumstances in which a qualifying body can discriminate against a person on the grounds of religious belief or activity (as discussed further below), it is noted that this is distinct from the ability of employers to make codes of conduct for employees.

6.74 Some submitters argued that clause 12 does not prevent employers making codes of conduct within the workplace that may limit the ability of religious employees to make statements of belief as long as, in accordance with clause 14, any condition, requirement or practice in the code is reasonable and does not subject employees to disadvantage on the basis of religious belief. The Attorney-General's Department stated:

The Bill does not limit the ability of employers to impose a reasonable condition, requirement or practice on staff for conduct at work, provided all employees are treated equally and not subjected to a disadvantage on the ground of their religious belief or activity...

An employer does not discriminate against an employee under the Bill by disciplining that employee for conduct at work to the extent that the employer would similarly discipline another employee who did not have that religious belief or engage in that religious activity.<sup>132</sup>

6.75 Nevertheless, other submitters argued that clause 12 will have a negative impact on conduct in the workplace as employers may change their policies in fear of being accused of religious discrimination and may be reluctant to discipline employees for making any kind of statement of belief.<sup>133</sup> Many submitters argued that it was inappropriate for statements of belief to be able to be made in the workplace.<sup>134</sup> It was argued that where individuals make statements of belief, employers are not able to know whether these statements are made in 'good faith' or are genuinely held beliefs, and this could lead to unwelcome changes in workplace culture due to an inability of employers to address issues.<sup>135</sup> Equality Australia submitted:

The effect of section 12 will be to lower-the-bar for acceptable conduct in the workplace and in education settings, as organisations change their

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131 Law Council of Australia, *Submission 28*, p. 38; Kingsford Legal Centre, *Submission 110*, p. 9; Legal Aid Queensland, *Submission 92*, p. 7.

132 Attorney-General's Department, answer to written question on notice, question 11 (received 11 January 2022).

133 See, e.g., Equality Australia, *Submission 31*, p. 13.

134 Australian Services Union, *Submission 101*, p. 7; Fair Agenda, *Submission 122*, p. 7; Unions Tasmania, *Submission 176*, p. 5

135 Women's Health Tasmania, *Submission 39*, p. 5.

policies and approach to accommodate offensive, harmful or demeaning speech in the workplace for fear that they will be sued for religious discrimination if they do not. So, beyond its legal effect, section 12 will have a detrimental and practical effect in enabling and authorising discrimination that may be unlawful today. The provision will also discourage people from calling out discriminatory statements as inappropriate or unwelcome. This is because section 12 clearly sends the message that discriminatory speech based on a religious view or about religion is protected and privileged over other forms of discrimination, including protections for people of faith.<sup>136</sup>

6.76 Some submitters argued that the operation of clause 12 would result in an unclear application of anti-discrimination laws in the workplace. Submitters were concerned that anti-discrimination law has operated to ensure inclusive and safe workplace cultures but that these changes would lower workplace standards for acceptable conduct.<sup>137</sup>

6.77 The Australian Council of Trade Unions submitted that the bill 'may impact on an employer's capacity to take action under a policy, code of conduct, contract or enterprise agreement to prevent discriminatory and harmful statements from being made at work'. It noted that workplace codes of conduct or similar policies often prohibit discriminatory statements and commit an employer to working to prevent discrimination in the workplace. These codes or policies are generally founded on anti-discrimination laws. It argued that if, under this bill, certain religiously based statements do not constitute discrimination, it is 'entirely unclear whether a "sexist or discriminatory" statement would still amount to a breach of that provision of the code, contract, policy or enterprise agreement, casting doubt on an employer's capacity to act effectively to create safe and inclusive workplaces'.<sup>138</sup>

6.78 Some submitters raised concern particularly about the place of women in the workplace and argued that well-established protections would be undermined.<sup>139</sup> Chief Executive Women stated:

we believe these Bills undermine tolerant, fair, safe and inclusive workplaces. Unconscious bias and discriminatory assumptions, norms, and cultures in workplaces are key barriers to women's workforce participation, progression into leadership and to closing the gender pay gap.<sup>140</sup>

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136 Equality Australia, *Submission 31*, pp. 13-14.

137 Youth Affairs Council of Western Australia, *Submission 155*, p. 11; LGBTIQ+ Health Australia, *Submission 156*, p. 8; Human Rights Law Centre, *Submission 190*, p. 18.

138 Australia Council of Trade Unions, *Submission 64*, pp. 12-13.

139 Victorian Trades Hall Council, *Submission 11*, p. 2; Law Council Australia, *Submission 28*, p. 36; Equality Rights Alliance, *Submission 166*, p. 7.

140 Chief Executive Women, *Submission 65*, p. 1.

6.79 A number of submitters sought further clarity on the interaction of clause 12 and the *Fair Work Act 2009*, and raised concerns that the bill caused additional confusion in this area.<sup>141</sup>

6.80 The Attorney-General's Department stated that proposed amendments in this legislative package to the *Fair Work Act 2009* would mean that conduct that is not unlawful under the Religious Discrimination Act (as a result of clause 12) would also not be unlawful under section 351 of the *Fair Work Act 2009* (which makes it unlawful for an employer to take adverse action against an employee on a number of grounds, including religion). It submitted:

a statement of belief made by an employer to an employee or prospective employee that meets the definition in section 12 of the Religious Discrimination Act would not be unlawful under section 351 of the Fair Work Act, in the absence of other conduct that caused a detriment to the employee or prospective employee.<sup>142</sup>

6.81 In relation to this, the Australian Council for Trade Unions submitted:

The scope of the exemptions in s 351 are different to those in the [bill]...meaning employers will now have to navigate three different types of religious exemptions at the Commonwealth level. The [bill] may also prevent a worker from bringing a cause of action under s 351(1) of the [Fair Work] Act, because conduct that is 'not unlawful' under any anti-discrimination law in force in the place where the action is taken is not covered by the adverse action protections in that section. In circumstances where a discriminatory statement by an employer to an employee constituted 'adverse action' within the meaning of s 342 (for example where the statement 'discriminated between the employee and other employees of the employer'), and amounted to 'less favourable treatment' of that employee, a claim that might otherwise have been available under s 351 may be effectively blocked by this Bill, leaving the employee without effective legal recourse under either discrimination laws or the [Fair Work] Act.<sup>143</sup>

### **Access to resolution of discrimination complaints**

6.82 In establishing that a statement of belief will not contravene other anti-discrimination provisions, a defence against a claim made under anti-discrimination laws is created. Numerous submitters and witnesses raised concerns as to the

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141 Health Services Union, *Submission 15*, p. 9; Australian Council of Trade Unions, *Submission 64*, pp. 8-9; Equality Australia, *Submission 31*, p. 34; Equal Voices, *Submission 32*, p. 3; Legal Aid Queensland, *Submission 92*, pp. 7 and 9.

142 Attorney-General's Department, answer to question on notice, 22010, (received 21 January 2022).

143 Australia Council of Trade Unions, *Submission 64*, p. 9.

potential for practical difficulties if a statement of belief defence was raised in response to a discrimination complaint. The Law Council of Australia explained:

protection from discrimination is provided through a combination of federal, State and Territory laws. Discrimination complaints are overwhelmingly heard and determined in State and Territory tribunals, rather than through the federal court system. The primary reason is that each of the State and Territory tribunals currently operates on a ‘no costs’ basis in the area of discrimination law. In all states and territories save Queensland, the tribunal which hears antidiscrimination complaints is not a Chapter III court and cannot exercise Federal jurisdiction or determine a question of federal law.<sup>144</sup>

6.83 A number of submitters noted that while most states and territories have processes for transferring cases to courts that have federal jurisdiction, not all do, and even where they can be transferred it will add to the time, cost and complexity of the case.<sup>145</sup> Ms Katherine Eastman SC, Chair of the Equal Opportunity Committee, Law Council of Australia, gave evidence that if a case needs to be transferred to the federal jurisdiction this will add significantly to the costs for a discrimination complaint, as the federal jurisdiction is a costs jurisdiction. Ms Eastman SC noted:

One thing that has always been a feature of discrimination law—and it's echoed by a comment made by Justice Lockhart many years ago in a case called Mount Isa Mines—is that discrimination law should not just be the province of experts or lawyers. These are laws that need to be accessible to people to be able to exercise their rights quickly, cheaply and effectively. And, whenever we have this conflict between state and federal laws, who has got jurisdiction to deal with different claims? It does become very legal and very complex. Frankly, the persons whom the complaints concern are often left behind in the legal argument.<sup>146</sup>

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144 Law Council Australia, *Submission 28*, p. 39. See also Equality Australia, *Submission 31*, p. 18; Associate Professor Luke Beck, *Submission 38*, p. 14; Public Interest Advocacy Centre, *Submission 40*, p. 7; Wimmera Pride Project, *Submission 90*, p. 2; Australian Human Rights Commission, *Submission 97*, pp. 30-31; ACT Government, *Submission 192*, p. 11; Ms Katherine Eastman, SC, Chair, Law Council of Australia Equal Opportunity Committee, Law Council of Australia, *Committee Hansard*, 14 January 2022, p. 37.

145 Australian Lawyers Alliance, *Submission 2*, p. 9; Diversity Council of Australia, *Submission 13*, p. 14; Law Council Australia, *Submission 28*, p. 39; Equality Australia, *Submission 31*, p. 18; Public Interest Advocacy Centre, *Submission 40*, p. 7; Australian GLBTIQ Multicultural Council, *Submission 80*, p. 3; Australian Human Rights Commission, *Submission 97*, pp. 30-31; Anti-Discrimination NSW, *Submission 113*, p. 5; Women's Electoral Lobby, *Submission 188*, p. 4; Rainbow Families Queensland, *Submission 194*, p. 3; Ms Anna Brown, Equality Australia, *Committee Hansard*, 21 December 2021, p 67; Ms Elise Christian, Equal Voices, *Committee Hansard*, 21 December 2021, p 76; Ms Josephine Flanagan, Women's Health Tasmania, *Committee Hansard*, 14 January 2022, p 49.

146 Ms Katherine Eastman, Law Council of Australia, *Committee Hansard*, 14 January 2022, p. 33.

6.84 The Australian Discrimination Law Experts Group submitted:

This delay and complexity is at odds with the approach adopted in all discrimination laws to enable complaints to proceed more quickly, informally and inexpensively to the parties than other claims. This will significantly increase the costs and delay of discrimination litigation, undermining the international human rights law right to an effective remedy for a discrimination complaint. Numerous, if not the majority of, discrimination complaints would be forced to cease their complaint for reasons of cost and time.<sup>147</sup>

6.85 The ACT Government further explained that this could add significantly to the time taken to assess the complaint.<sup>148</sup> Submitters raised that this would likely see few complainants continue with their complaint due to these difficulties and would make the complaints process far less accessible.<sup>149</sup> Associate Professor Luke Beck submitted:

by setting up "statements of belief" as a defence to State anti-discrimination laws section 12 has the effect of depriving many discrimination victims of access to the State tribunal systems. Discrimination cases involving breaches of State anti-discrimination laws are usually dealt with by the State tribunal systems. State tribunal systems are less formal than courts, often quicker than courts, and less expensive than courts. A particularly important feature of the State tribunal systems is that ordinarily a party who loses a case is not subject to an adverse costs order. This allows ordinary people who are victims of discrimination to seek justice without having to risk their homes or financial livelihood in the event they lose on a technicality. By contrast, the losing party in a court case is ordinarily ordered to pay the other side's legal costs. Section 12 significantly impedes access to the State tribunal systems.<sup>150</sup>

6.86 However, it was submitted by Associate Professor Mark Fowler that once the law around clause 12 had developed over time, there would be less need for matters to be heard in a federal court, '[o]nce we have a body of law around clause 12, the state will simply apply that law.'<sup>151</sup>

6.87 It was further raised that a complaint initiated at the state or territory level is barred from being heard at the federal level, and therefore there would be no option for complainants who had initiated their complaint at the state or territory level to

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147 Australian Discrimination Law Experts Group, *Submission 33*, p. 12.

148 ACT Government, *Submission 192*, p. 11.

149 Australian Lawyers Alliance, *Submission 2*, p. 9; Equality Australia, *Submission 31*, p. 18; Associate Professor Luke Beck, *Submission 38*, p. 14; Public Interest Advocacy Centre, *Submission 40*, p. 7; Dr Bruce Baer Arnold, *Submission 43*, p. 3; Wimmera Pride Project, *Submission 90*, p. 2; NT Anti-Discrimination Commission, *Submission 169*, p. 7.

150 Associate Professor Luke Beck, *Submission 38*, p. 14.

151 Associate Professor Mark Fowler, *Committee Hansard*, 21 December 2021, p. 7.

seek resolution in the federal jurisdiction.<sup>152</sup> The Australian Human Rights Commission explained:

If the case cannot be validly transferred to a court, the complainant may lose the right to have their complaint heard at all. This is because, once a complaint has been made to a State or Territory anti-discrimination body, the complainant is prevented from making the same complaint to the Australian Human Rights Commission. In those cases, the result of raising the 'statement of belief' defence would be to entirely defeat what might be a legitimate discrimination claim without any consideration of the merits of the claim.<sup>153</sup>

6.88 The Attorney-General's Department explained how the statement of belief defence would operate in practice:

This provision will operate as a federal defence to a claim of discrimination under Commonwealth, state or territory anti-discrimination law. Tribunals may therefore be unable to consider matters where a defence under this clause is raised. However, states and territories each have competent courts. If their arrangements for hearing discrimination claims provide a barrier to complainants accessing a court instead of a tribunal, it is open to states and territories to make amendments to their legislation.<sup>154</sup>

### **Qualifying bodies**

6.89 Clause 15 of the bill provides that a qualifying body discriminates against a person on the grounds of religious belief or activity if:

- (a) the qualifying body imposes, or proposes to impose, a condition, requirement or practice (a qualifying body conduct rule) on persons seeking or holding an authorisation or qualification from the qualifying body that relates to standards of behaviour of those persons; and
- (b) the qualifying body conduct rule has, or is likely to have, the effect of restricting or preventing the person from making a statement of belief other than in the course of the person practising in the relevant profession, carrying on the relevant trade or engaging in the relevant occupation.

6.90 However, it further provides that a qualifying body does not discriminate against a person if compliance with the qualifying body conduct rule by the person is an essential requirement of the profession, trade or occupation. A qualifying body is defined as meaning an authority or body empowered to confer, renew, extend,

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152 Australian Human Rights Commission, *Submission 97*, pp. 30-31; Anti-Discrimination NSW, *Submission 113*, p. 5.

153 Australian Human Rights Commission, *Submission 97*, p. 31.

154 Attorney-General's Department, answer to written question on notice, question 10 (received 11 January 2022).

revoke, vary or withdraw an authorisation or qualification needed for (or facilitates) the practice of a profession, the carrying on of a trade, or the engaging in of an occupation.<sup>155</sup>

6.91 Previous exposure drafts of the religious discrimination package also included a provision known as the 'Folau clause', which operated to prohibit employers terminating an individual's employment for expressing a statement of belief. This has been removed from the current legislative package, allowing employers to continue to set standards of conduct expected of employees in and outside of the workplace. The inclusion of clause 15 and the removal of the 'Folau clause' means that employers can generally set standards of conduct for employees, but qualifying bodies cannot include rules that prohibit the making of a statement of belief, unless the rule is an essential requirement of that profession, trade or occupation.

6.92 While a number of submitters supported the removal of the 'Folau clause', a number of other submitters expressed disappointment at its removal and raised concern about the impact this would have on people of faith to make statements of belief.<sup>156</sup> The Australian Catholics Bishops Conference submitted that the ability of employers to place restrictions on religious speech meant that workers would fear making statements of belief outside the workplace, commenting that:

The clause 12 provision still does not operate to protect religious speech in other circumstances. It should be noted that the failure to place any meaningful constraint on an employer's right to discriminate on the basis of religious belief will mean that workers are still not protected for statements of belief outside the workplace. The lack of employment protections contributes to a fear amongst ordinary people of faith of adverse action from employers, such that they engage in self-censorship. This chilling effect on freedom of religion is in addition to reported incidents of religious discrimination in the workplace and other areas.<sup>157</sup>

6.93 The Presbyterian Church of Victoria considered clause 15 should be extended to cover employers as well as qualifying bodies:

the effect of this clause is that a professional association cannot discipline a member of that association for making a statement of belief, while an employer can. This glaring omission has and will continue to result in employers coercing their employees to not to practice their religious beliefs outside of work.<sup>158</sup>

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155 Religious Discrimination Bill 2021, clause 5, definition of 'qualifying body'.

156 See, e.g., Presbyterian Church of Victoria, *Submission 133*, p. 4; Australian Christian Churches, *Submission 63*, p. 6; Association for Reformed Political Action, *Submission 104*, p. 4; Australian Christian Lobby, *Submission 16*, p. 6.

157 Australian Catholic Bishops Conference, *Submission 185*, p. 10.

158 Presbyterian Church of Victoria, *Submission 133*, p. 4.



6.94 Some submitters and witnesses held that it was appropriate that qualifying bodies should not be able to impose conditions preventing individuals from making statements of belief. It was argued that making such statements outside the workplace has no bearing on an individual's ability to undertake their job professionally, and expressing religious beliefs should not impact on an individual's career. For example, Freedom for Faith set out why it considered this clause is necessary:

An example of a situation where this has arisen in the past can be seen in the UK case involving social work student Felix Ngole, who was removed from his social work course based on comments he made opposing same-sex marriage on a social media site which was not in any way connected with his social work studies. Of course there will still be room for debate about what is an "essential requirement" for a profession, but at least this provision may provide some food for thought when professional bodies purport to lay down conduct requirements penalising members of their profession speaking on controversial issues outside their professional context.<sup>159</sup>

6.95 The Executive Council of Australian Jewry stated:

In our view, the making of a moderate statement of belief outside the work context may cause offence to some but would not impinge on their fundamental rights in terms of Article 18.3 of the ICCPR, and should not be used as a pretext for denying a person the means to pursue their chosen career in order to earn a livelihood.<sup>160</sup>

6.96 Other submitters argued that clause 15 did not go far enough. For example, the Australian Christian Churches argued that clause 15 should be amended to ensure that moderate statements of belief could be made within and outside the work context.<sup>161</sup> The Australian Christian Higher Educational Alliance submitted that the definition of 'qualifying bodies' should be expanded 'to cover discrimination by bodies that have power over an authorisation or qualification needed for the establishment, operation or funding of a religious educational institution and discriminate against the institution on the basis of its religious beliefs or activity'.<sup>162</sup>

6.97 Numerous submitters and witnesses, however, were opposed to the inclusion of clause 15. They argued that it was necessary for qualifying bodies to be able to determine the rules that regulate the conduct of a profession, and necessary for a qualifying body to be able to consider whether an individual upholds particular values

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159 Freedom for Faith, *Submission 10*, p. 11.

160 Executive Council of Australian Jewry, *Submission 19*, p. 10.

161 Australian Christian Churches, *Submission 63*, p. 6.

162 Australian Christian Higher Educational Alliance, *Submission 25*, p. 14.

to ensure trust and integrity in the profession.<sup>163</sup> It was argued that clause 15 is confusing and uncertain in its application,<sup>164</sup> and in particular subclause 15(2), which provides that 'a qualifying body does not discriminate against a person if compliance with the qualifying body conduct rule by the person is an essential requirement of the profession, trade or occupation', is uncertain in its application as an 'essential requirement' is not a term used elsewhere in anti-discrimination law.<sup>165</sup> The Attorney-General's Department further explained the term 'essential requirement':

Whether compliance with a qualifying body conduct rule is an 'essential requirement' of the profession, trade or occupation must be determined objectively based on the evidence and the circumstances of the case. In general terms, the department considers that this will require consideration of whether compliance with the rule is an essential element of the profession, such as whether compliance is clearly necessary to carry out the particular profession, or whether the practice of that profession would be essentially the same if that rule were dispensed with. This may include considering not just the specific services provided by the profession, but the general effect of the rule on the public reputation and community standing of members of that profession, trade or occupation.<sup>166</sup>

6.98 It was further raised that in practice, it would be impossible for qualifying bodies to know whether a statement was based in religious belief, and more broadly the clause creates difficulty in appropriately responding to complaints and disciplining members.<sup>167</sup> Some submitters also raised concern that the status of some professionals, in relation to their patients, students or other service users, increases the likelihood of harm arising from statements of belief,<sup>168</sup> and that statements of

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163 Law Council Australia, *Submission 28*, pp. 41-42; NSW Council for Civil Liberties, *Submission 181*, p. 10; Rainbow Families, *Submission 182*, p. 5; Human Rights Law Centre, *Submission 190*, p. 18.

164 Australian Health Promotion Association, *Submission 72*, p. 2; Medical Insurance Group Australia, *Submission 109*, p. 1; Liberty Victoria, *Submission 186*, p. 11

165 Equality Australia, *Submission 31*, pp. 20-21; Pride in Law, *Submission 37*, p. 3; Public Affairs Commission of the Anglican Church of Australia, *Submission 78*, p. 11; Legal Aid Queensland, *Submission 92*, p. 8; ACT Government, *Submission 192*, p. 13; Australian Medical Association, *Submission 96*, p. 6.

166 Attorney-General's Department, *Questions on Notice*, p. 15.

167 Equality Australia, *Submission 31*, pp. 20-21; Pride in Law, *Submission 37*, p. 2; Anti-Discrimination NSW, *Submission 113*, p. 6; Queensland Advocacy Incorporation, *Submission 115*, p. 6; Fair Agenda, *Submission 122*, p. 9; Youth Affairs Council of Western Australia, *Submission 155*, p. 11; Australian Association for Social Workers, *Submission 159*, p. 6; Women's Electoral Lobby, *Submission 188*, p. 17; ACT Government, *Submission 192*, p. 13.

168 Tasmanian Council of Social Service, *Submission 36*, p. 8; Public Affairs Commission of the Anglican Church of Australia, *Submission 78*, p. 11; A coalition of disability advocacy organisations, *Submission 167*, p. 3; Australian Medical Association, *Submission 96*, p. 5.

belief made by professionals could lead to undermining confidence in, and the standing of, the profession and individuals' willingness to access services.<sup>169</sup> Legal Aid Queensland submitted:

For example, based on our recent experience dealing with queries about religious discrimination and COVID-19 vaccination mandates, it is envisioned that persons may seek to share COVID-19 misinformation under the guise of a religious 'statement of belief', which could have undesirable public health consequences when promoted by persons occupying particular roles. It may be difficult for qualifying bodies to anticipate how these types of scenarios may arise, but it would be obviously concerning if people occupying professional roles were permitted to engage in the sharing of misinformation in this manner that could promote social division and public harm. By placing a restriction on qualifying bodies to respond to offensive and harmful statements of belief that are made outside the workplace it will have an impact across the relevant industries that the qualifying body has coverage of.<sup>170</sup>

6.99 Submitters and witnesses also argued that clause 15 would pose particular problems for legal, health, education and social worker professional bodies.<sup>171</sup> The Law Council of Australia expressed concerns about the impact clause 15 may have on the duty of legal practitioners to the court and administration of justice,<sup>172</sup> and the legal profession's 'historical commitment to ensure equality before the law and defend the rights of all persons'.<sup>173</sup>

6.100 A number of medical bodies considered that clause 15 created confusion for health practitioners as to what professional code or legislation they should adhere to.<sup>174</sup> The Australian Medical Association stated:

the provisions in the Bill do not necessarily guarantee the application of [the Australian Health Practitioner Regulation Agency's] professional standards were a doctor to speak publicly in a private capacity. A doctor could be subject to a notification under Ahpra should they act in a way inconsistent with standards set by Ahpra and the Medical Board. Currently, such a

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169 Just Equal Australia, *Submission 69*, p. 4; Family Planning NSW, *Submission 88*, p. 5; Dr Sean Mulcahy, *Submission 126*, p. 12; Amnesty International Australia, *Submission 157*, p. 24; Australian Association for Social Workers, *Submission 159*, p. 6; LGBTI Legal Service Inc, *Submission 161*, p. 4; Australian Lawyers for Human Rights, *Submission 171*, p. 113; Women's Health Victoria, *Submission 173*, p. 5.

170 Legal Aid Queensland, *Submission 92*, p. 8.

171 See, e.g. Australian Association for Social Workers, *Submission 159*, p. 6.

172 See also, Australian Lawyers Alliance, *Submission 2*, p. 10; Pride in Law, *Submission 37*, p. 3; Australian Lawyers for Human Rights, *Submission 171*, p. 113.

173 Law Council Australia, *Submission 28*, pp. 41–42.

174 Health Services Union, *Submission 15*, pp. 6–7; Australian Nursing and Midwifery Federation, *Submission 118*, p. 9; Australian Medical Association, *Submission 96*, p. 6.

notification could have potential employment implications for the doctor including possible dismissal; however, under the Bill the doctor would be protected from such dismissal even though they breached their professional standards.

Legislation that conflicts with professional standards may cause serious confusion in the real world where doctors, patients and employers will not know, in their daily work at the coalface, whether professional standards are enforceable, potentially leading to as yet unclear, and possibly adverse, patient outcomes.<sup>175</sup>

6.101 Some submitters also argued clause 15 put people's health at risk, negatively impacts the level of trust individuals needing health care have in medical professionals, and would reduce access to individuals seeking health services.<sup>176</sup> In relation to educational professional bodies, the Australian Education Union Federal Office expressed concern that clause 15 would undermine the regulation of the teaching profession and put students and teachers at risk of harm.<sup>177</sup> The Australian Education Union also argued that application of the provision was unclear, and it was not certain whether the clause overrides state and territory statutory requirements relating to 'suitability' or 'fit and proper' person tests.<sup>178</sup>

6.102 A number of submitters and witnesses also commented that this provision was unnecessary, as clause 14 on indirect discrimination, which includes a standard reasonableness test, is enough to make unlawful any rules which limit freedom of religion during or outside work.<sup>179</sup> For example, the Australian Human Rights Commission stated that clause 15 is essentially a deeming provision in relation to indirect discrimination, such that 'in the very specific circumstances set out, the conduct will be deemed to be discrimination'. It went on to note that qualifying bodies are already separately prohibited from discriminating against a person on the ground of the person's religious belief or activity and under the standard test for indirect discrimination would not be able to impose an unreasonable condition, requirement or practice (such as a 'conduct rule') that has the likely effect of disadvantaging persons who hold a religious belief. The Commission went on to state:

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175 Australian Medical Association, *Submission 96*, p. 6.

176 Kingsford Legal Centre, *Submission 110*, p. 9; Youth Pride Network, *Submission 124*, p. 11; LGBTI Legal Service Inc, *Submission 161*, p. 4; Women's Health Victoria, *Submission 173*, p. 5; Centre for Women's Safety and Wellbeing, *Submission 179*, p. 6; Rainbow Families Queensland, *Submission 194*, p. 3.

177 Australian Education Union Federal Office, *Submission 21*, p. 7.

178 Australian Education Union Federal Office, *Submission 21*, p. 7.

179 Law Council Australia, *Submission 28*, p. 42; Public Interest Advocacy Centre, *Submission 40*, p. 20; Equality Australia, *Submission 31*, pp. 23; Australian Human Rights Commission, *Submission 97*, p. 63; Uniting Network Australia, *Submission 153*, p. 17; Human Rights Law Centre, *Submission 190*, p. 18.

An assessment of whether the conduct rule is reasonable is likely to take into account the very elements of the special test in clause 15, including whether the rule is an essential requirement of the profession, trade or occupation. It appears that it would be much less likely for a conduct rule to be considered reasonable where (as described in clause 15) the conduct sought to be regulated is conduct engaged in other than when a person is carrying on a relevant trade or engaging in a relevant occupation. The assessment of reasonableness would also be likely to take into account whether the rule would prohibit conduct that is malicious or that would threaten, intimidate, harass or vilify a person or group.

There is no principled reason to depart from the standard test of reasonableness or to create a separate test of indirect discrimination for qualifying body conduct rules. It is a further example of legislating for single instances. It should be removed from the Bill because it is not necessary.<sup>180</sup>

6.103 The explanatory memorandum stated in relation to this clause:

This clause recognises that individuals, including, for example, teachers, lawyers, health professionals and tradespeople, should not be at risk of losing their registration or qualifications by reason of the expression of their religious beliefs in their personal capacity. In addition, students of universities and other vocational education and training institutions, to the extent that those bodies are qualifying bodies, should not be at risk of not receiving their qualification due to the expression of their religious beliefs.

This presumption only operates in relation to conduct rules that restrict or prevent a person from making a statement of belief other than in the course of practising their profession, trade or occupation. Nothing in this subclause affects the ability of qualifying bodies to regulate religious expression by persons in the course of engaging in their profession, trade or occupation.<sup>181</sup>

## International human rights law

### ***Rights to freedom of religion, freedom of expression and equality and non-discrimination***

6.104 By affording greater protection to individuals to make statements of belief, the measure promotes the rights to freedom to manifest religion and freedom of expression.<sup>182</sup> As outlined in Chapter 2, the right to freedom of religion includes the freedom, either individually or in community with others and in public or private, to

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180 Australian Human Rights Commission, *Submission 97*, pp. 62-63.

181 Religious Discrimination Bill 2021, explanatory memorandum, p. 63.

182 Although, as discussed above, some submitters and witnesses were of the view that clause 12 inconsistently implemented the right to freedom of religion (article 18) by prioritising religious speech over non-religious speech. See, e.g. Professor George Williams, *Submission 1*, pp. 1–2; Equality Australia, *Submission 31*, p.13; Associate Professor Luke Beck, *Submission 38*, pp. 4-5; Rationalist Society of Australia, *Submission 42*, p. 2; Youth Affairs Council of Western Australia, *Submission 155*, p. 8; Amnesty International Australia, *Submission 157*, p. 14.

manifest one's religion or belief in worship, observance, practice and teaching.<sup>183</sup> Freedom to manifest religion encompasses a broad range of acts, including ritual and ceremonial acts, the building of places of worship, the wearing of religious dress, including distinctive clothing or head coverings,<sup>184</sup> and the observance of dietary regulations.<sup>185</sup> The terms 'observance' and 'practice' do not contain 'any spatial or institutional specificities and must be broadly applied', including in the workplace.<sup>186</sup>

6.105 The right to freedom to manifest religion intersects with, and has a mutually reinforcing relationship with, the right to freedom of expression.<sup>187</sup> As outlined in Chapter 2, the right to freedom of expression protects '[a]ll forms of opinion, including opinions of a political, scientific, historic, moral or religious nature' and includes the expression and receipt of religious discourse.<sup>188</sup> The UN Special Rapporteur on freedom of religion or belief has observed that the right to manifest one's religion relies on the degree of protection afforded to freedom of expression and likewise, respect for freedom of thought and conscience is necessary for respect for freedom of opinion and expression.<sup>189</sup> They stated each right is 'necessary for the meaningful enjoyment' of the other, and 'the two rights are not only interdependent, but also exist in a legal continuum with myriad other rights'.<sup>190</sup>

6.106 It is well established that the right to freedom of religion or belief 'does not include the right to have a religion or belief that is free from criticism or ridicule' and where such criticism offends or hurts the feelings of religious people, 'it does not necessarily or at least directly result in a violation of their rights, including their right

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183 International Covenant on Civil and Political Rights, article 18(1).

184 See *Yaker v France*, UN Human Rights Committee Communication No.2747/2016 (2018) [8.3]; *Türkan v Turkey*, UN Human Rights Committee Communication No.2274/2013 (2018) [7.2]–[7.3]; *FA v France*, UN Human Rights Committee Communication No.2662/2015 (2018) [8.3].

185 UN Human Rights Committee, *General Comment No. 22: Article 18 (Freedom of thought, conscience or religion)* (1993) [4].

186 UN General Assembly, *Elimination of all forms of religious intolerance: Interim report of the Special Rapporteur on freedom of religion or belief*, A/69/261 (2014) [31].

187 International Covenant on Civil and Political Rights, article 19. See also UN Human Rights Committee, *General Comment No. 34: Article 19: Freedoms of Opinion and Expression* (2011) [9], [11].

188 UN Human Rights Committee, *General Comment No. 34: Article 19: Freedoms of Opinion and Expression* (2011) [9], [11].

189 UN Human Rights Council, *Freedom of religion or belief: Report of the Special Rapporteur on freedom of religion or belief*, A/HRC/40/58 (2019) [7].

190 UN Human Rights Council, *Freedom of religion or belief: Report of the Special Rapporteur on freedom of religion or belief*, A/HRC/40/58 (2019) [5], [14]. See also UN Human Rights Council, *Report of the Special Rapporteur on freedom of religion or belief*, A/HRC/31/18 (2015).

to freedom of religion'.<sup>191</sup> Indeed, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has reiterated that 'the right to freedom of expression includes expression of views and opinions that offend, shock or disturb'.<sup>192</sup> The UN Human Rights Committee has also stated that the right to freedom of expression encompasses expression that may be regarded as deeply offensive and insulting, although such expression may be restricted in accordance with the limitation clause in article 19(3) and article 20 of the International Covenant on Civil and Political Rights.<sup>193</sup> In this regard, statements of belief made pursuant to clause 12 that may be regarded as offensive or insulting would likely be protected speech under the right to freedom of expression, noting the important status of this right under international human rights law.<sup>194</sup>

6.107 However, insofar as the measure overrides existing federal, state and territory anti-discrimination laws and so may have the effect of making otherwise discriminatory behaviour lawful, it may engage and limit the right to equality and non-discrimination if such behaviour were to also constitute discrimination under international human rights law. As outlined in Chapter 2, this right provides that everyone is entitled to enjoy their rights without discrimination of any kind.<sup>195</sup>

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191 UN Human Rights Council, *Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, further to Human Rights Council decision 1/107 on incitement to racial and religious hatred and the promotion of tolerance*, A/HRC/2/3 (2006) [36]–[37].

192 UN Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue*, A/HRC/17/27 (2011) [37].

193 UN Human Rights Committee, *General comment No. 34: Article 19: Freedoms of opinion and expression*, CCPR/C/GC/34 (2011) [11] and [38]. Article 20 of the International Covenant on Civil and Political Rights also places limits on the freedom to manifest religion, providing that any manifestation of religion or beliefs must not amount to propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

194 UN Human Rights Committee, *General comment No. 34: Article 19: Freedoms of opinion and expression*, CCPR/C/GC/34 (2011) [2]–[3]. The UN Human Rights Committee stated that: 'Freedom of opinion and freedom of expression are indispensable conditions for the full development of the person. They are essential for any society. They constitute the foundation stone for every free and democratic society. The two freedoms are closely related, with freedom of expression providing the vehicle for the exchange and development of opinions. Freedom of expression is a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights'.

195 International Covenant on Civil and Political Rights, articles 2 and 26. Article 2(2) of the International Covenant on Economic, Social and Cultural Rights also prohibits discrimination specifically in relation to the human rights contained in the International Covenant on Economic, Social and Cultural Rights.

6.108 The term 'discrimination' is understood to 'imply any distinction, exclusion, restriction or preference which is based on any [protected attribute]...and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.<sup>196</sup> The right to equality encompasses both 'direct' discrimination (where measures have a discriminatory intent) and 'indirect' discrimination (where measures have a discriminatory effect on the enjoyment of rights).<sup>197</sup> This right may be limited to the extent that the measure makes lawful behaviour that would constitute either direct or indirect discrimination under international human rights law.<sup>198</sup>

6.109 In addition, if a statement of belief was considered to be so offensive to persons or groups with a protected attribute such that the enjoyment or exercise of their rights and freedoms was impaired, there could be a risk that the measure may result in indirect discrimination against such persons or groups, noting that states have an obligation to guarantee rights in a non-discriminatory way. For example, some submitters and witnesses were of the view that if health professionals made statements of belief that adversely impacted vulnerable groups, this may make these groups feel unwelcome and may impair their access to health care (see paragraph [6.72]).

6.110 Further, if the measure engages and limits the rights of women, people with disability, racial and ethnic minority groups, and children and young people, it is noted that international human rights law affords special protection to these groups taking into account their particular vulnerabilities.<sup>199</sup> It is noted that many statements of belief made pursuant to clause 12 are unlikely to rise to the level of actionable discrimination under international human rights law, noting that the right to freedom of expression protects offensive and insulting statements. However, there may be some risk that the measure may allow discrimination in certain circumstances, depending on the content of the statement and the context in which it is made.

6.111 Further, noting that the measure provides a federal defence to discrimination claims made under state and territory anti-discrimination laws, and as set out at paragraphs [6.82] to [6.87] may impact the determination of such claims, it may have implications on the right to an effective remedy. The right to an effective remedy requires the availability of a remedy which is effective with respect to any violation of rights and freedoms recognised by the International Covenant on Civil and Political

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196 UN Human Rights Committee, *General Comment 18: Non-discrimination* (1989) [7].

197 UN Human Rights Committee, *General Comment 18: Non-discrimination* (1989).

198 The measure would make otherwise discriminatory statements lawful but would not alter the effect of harassment, vilification or indictment provisions in existing anti-discrimination laws. See Religious Discrimination Bill 2021, explanatory memorandum, p. 56.

199 Convention on the Elimination of All Forms of Discrimination against Women; Convention on the Rights of Persons with Disability; Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Rights of the Child.



Rights.<sup>200</sup> It includes the right to have such a remedy determined by competent judicial, administrative or legislative authorities or by any other competent authority provided for by the legal system of the state. While limitations may be placed in particular circumstances on the nature of the remedy provided (judicial or otherwise), state parties must comply with the fundamental obligation to provide a remedy that is effective.<sup>201</sup> While a person whose right to equality and non-discrimination is limited has access to a complaints process, it is unclear the extent to which this measure will frustrate this process such that it limits their right to an effective remedy.

6.112 The statement of compatibility states that the measure promotes the right to freedom of expression and protects the ability of individuals to explain, discuss, share and express their fundamental beliefs.<sup>202</sup> It does this by overriding Commonwealth, state and territory anti-discrimination laws that may otherwise make such statements unlawful. However, the statement of compatibility does not acknowledge that the measure may engage and limit the right to equality and non-discrimination, noting that the mere stating of a belief, subject to the requirements in subclause 5(1) and clause 21, should not amount to discrimination.<sup>203</sup> It states that the measure is not intended to capture discriminatory conduct, which reflects that the right to freedom of expression is subject to restrictions and carries with it special duties and responsibilities.<sup>204</sup> The explanatory memorandum further states that the measure:

will not operate to exempt discriminatory conduct, or a series of conduct, merely because it has been accompanied by a statement of belief. Although the statement of belief is not, in and of itself, discriminatory, this clause will not affect the determination of whether associated conduct constitutes discrimination.<sup>205</sup>

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200 International Covenant on Civil and Political Rights, article 2(3). See, *Kazantzis v Cyprus*, UN Human Rights Committee Communication No. 972/01 (2003) and *Faure v Australia*, UN Human Rights Committee Communication No. 1036/01 (2005), State parties must not only provide remedies for violations of the ICCPR, but must also provide forums in which a person can pursue arguable if unsuccessful claims of violations of the ICCPR. Per *C v Australia* UN Human Rights Committee Communication No. 900/99 (2002), remedies sufficient for the purposes of article 5(2)(b) of the ICCPR must have a binding obligatory effect. Regarding remedies for violations of social, economic and cultural rights, see UN Committee on Economic, Social and Cultural Rights, *General Comment No. 9: the domestic application of the covenant* (1998).

201 See UN Human Rights Committee, *General Comment 29: States of Emergency (Article 4)* (2001) [14].

202 Religious Discrimination Bill 2021, statement of compatibility, p. 26.

203 Religious Discrimination Bill 2021, statement of compatibility, p. 26.

204 Religious Discrimination Bill 2021, statement of compatibility, p. 26.

205 Religious Discrimination Bill 2021, explanatory memorandum, p. 55.

6.113 In this regard, the explanatory memorandum noted that statements of belief could be used as evidence in support of a discrimination complaint concerning separate conduct.<sup>206</sup>

#### *Limitation criteria*

6.114 If the right to equality and non-discrimination were limited, under international human rights law, differential treatment on the basis of a protected attribute will not constitute unlawful discrimination if the differential treatment is based on reasonable and objective criteria such that it serves a legitimate objective, is rationally connected to that objective and is a proportionate means of achieving that objective.<sup>207</sup>

6.115 Further, where the manifestation of religion or the expression of a religious opinion or belief has an adverse effect on the rights or freedoms of others, each right must be balanced against each other.<sup>208</sup> Noting that there is no hierarchy of human rights, where limitable rights clash, 'the focus should be on ensuring that all human rights are protected, including through reasonable accommodation'.<sup>209</sup> In the context of this measure, the rights to freedom of religion and expression of those making the statement of belief must be balanced against the rights of others (to the extent that such statements would limit the rights of others). International human rights law jurisprudence indicates that the specific circumstances of the case, the competing

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206 Religious Discrimination Bill 2021, explanatory memorandum, p. 55.

207 UN Human Rights Committee, *General Comment 18: Non-Discrimination* (1989) [13]; see also *Althammer v Austria*, UN Human Rights Committee Communication No. 998/01 (2003) [10.2]. Under international human rights law, where a person possesses characteristics which make them particularly vulnerable to intersectional discrimination, such as on the grounds of both gender or sex and religion or other belief, the UN Committee on Economic, Social and Cultural Rights has highlighted that 'particularly special or strict scrutiny is required in considering the question of possible discrimination'. See *Marcia Cecilia Trujillo Calero v. Ecuador*, UN Committee on Economic, Social and Cultural Rights, Communication No. 10/2015, E/C.12/63/D/10/2015 (26 March 2018) [19.2]. See also *Rodriguez v Spain*, UN Committee on Economic, Social and Cultural Rights, Communication No. 1/2013 E/C.12/57/D/1/2013 (20 April 2016) [14.1]; UN Committee on Economic, Social and Cultural Rights, *General Comment 20: non-discrimination in economic, social and cultural rights* (2009) [17] and *General Comment 16: the equal right of men and women to the enjoyment of all economic, social and cultural rights* (2005) [5]; and Committee on the Elimination of Discrimination against Women, *General Recommendation No. 28: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, CEDAW/C/GS/28 (16 December 2010) [28].

208 See, e.g. *Ross v Canada*, United Nations Human Rights Committee Communication No. 736/1997 (2000) [11.5]–[11.8]; United Nations Human Rights Committee, *General Comment No 22: Article 18 of the ICCPR on the Right to Freedom of Thought, Conscience and Religion* (1993) [8]; UN Human Rights Council, *Freedom of religion or belief: Report of the Special Rapporteur on freedom of religion or belief*, A/HRC/40/58 (2019) [16].

209 UN Human Rights Council, *Report of the Special Rapporteur on freedom of religion and belief*, A/HRC/37/49 (2018) [81].

rights in question and the vulnerability of the persons involved are relevant considerations in undertaking this balancing exercise.<sup>210</sup>

*Legitimate objective*

6.116 The explanatory memorandum states that the purpose of the measure 'is to ensure that genuine and sincerely held religious views may be freely expressed without legal repercussion, provided they are expressed in good faith and are not malicious'.<sup>211</sup> This is reflected in the objects clause of the bill itself, which provides that one object of the bill is to 'ensure that people can, consistently with Australia's obligations with respect to freedom of religion and freedom of expression, and subject to specified limits, make statements of belief'.<sup>212</sup>

6.117 As to the necessity of the measure, the Attorney-General's Department stated that it is appropriate for the bill to 'clarify the ability of people of faith to express their religious beliefs in good faith' given that 'a person's religious belief, or lack of belief, is of significance to their identity, sense of self and the manner in which they live their life'.<sup>213</sup>

6.118 The general objective of protecting the rights to manifest religion and express religious beliefs is a legitimate objective (as noted in Chapters 4 and 5). However, there are some questions as to whether the objective of this specific measure addresses a pressing and substantial concern for the purposes of international human rights law. Subclause 12(1), in particular, was stated by the Attorney-General's Department to 'clarif[y] the existing operation of anti-discrimination laws'.<sup>214</sup> As discussed above (at paragraphs [6.14]–[6.15]), some submitters and witnesses were also of the view that this measure is unnecessary, as statements of belief can already be made, to the

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210 See, eg, [Black and Morgan v Wilkinson](#), Court of Appeal of England and Wales [2013] EWCA Civ 820, [35], [37]; *Staatkundig Gereformeerde Partij v the Netherlands*, European Court of Human Rights, Application No. 58369/10 (2012) [72]; *Travas v Croatia*, European Court of Human Rights, Application No 75581/13 (2017) [75]–[113]; UN Human Rights Council, *Report of the Special Rapporteur on freedom of religion and belief*, A/HRC/37/49 (2018) [40]; UN Economic and Social Council, *Civil and political rights, including the question of religious intolerance: Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir*, E/CN.4/2006/5 (2006) [51]–[52].

211 Religious Discrimination Bill 2021, explanatory memorandum, p. 55.

212 Religious Discrimination Bill 2021, paragraph 3(1)(d).

213 Attorney-General's Department, answer to written question on notice, question 8 (received 11 January 2022).

214 Attorney-General's Department, answer to question on notice, 22008, 14 January 2022, (received 21 January 2022).

extent that it does not interfere with anti-discrimination law as it currently exists.<sup>215</sup> If subclause 12(1) is intended to clarify the existing law, it is not clear that it addresses an issue of public or social concern that is pressing and substantial enough to warrant limiting human rights.<sup>216</sup>

### *Proportionality*

6.119 In considering whether the measure is sufficiently circumscribed, it is relevant to consider the scope of the measure. As currently drafted, the measure overrides several federal, state and territory laws and confers power to prescribe other laws by regulations. Regarding this latter power, the Attorney-General's Department stated that while no other laws have yet been identified, the power provides 'flexibility and acts as a safeguard in the event that future Commonwealth, state or territory laws are identified as unreasonably limiting the ability of a person to make a statement of belief'.<sup>217</sup>

6.120 As noted above (at paragraphs [6.31]–[6.35]), some submitters and witnesses raised concerns at the breadth of this power and the ability for the executive to override federal, state or territory laws. International human rights law jurisprudence states that laws conferring discretionary powers on the executive must indicate with sufficient clarity the scope of any such power or discretion conferred on competent authorities and the manner of its exercise.<sup>218</sup> This is because, without sufficient safeguards, broad powers may be exercised in such a way as to be incompatible with human rights. Without knowing what other laws may be prescribed, it is not clear whether other human rights may be engaged and limited by the measure. It is also noted that as the measure overrides all anti-discrimination law without regard to the individual circumstances of the case, it contains no flexibility to treat different cases differently.

6.121 The statement of compatibility identifies two main safeguards in relation to clause 12: the requirement in subclause 5(1) that statements be made in 'good faith' and that beliefs be 'genuinely' held, and the requirement in subclause 12(2) that statements not be malicious, or harass, threaten, intimidate or vilify a person or group

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215 See, e.g., Dr Renae Barker, *Submission 6*, p. 7; Diversity Council Australia, *Submission 13*, p. 12; Public Affairs Commission of the Anglican Church of Australia, *Submission 78*, p. 3; Australian Human Rights Commission, *Submission 97*, p. 17; Human Rights Law Centre, *Submission 190*, p. 17.

216 Attorney-General's Department, *Committee Hansard*, Senate Legal and Constitutional Affairs Legislation Committee, 21 January 2022, p. 67.

217 Attorney-General's Department, answer to written question on notice, question 9 (received 11 January 2022).

218 *Hasan and Chaush v Bulgaria*, European Court of Human Rights App No.30985/96 (2000) [84].

of persons.<sup>219</sup> Regarding the former, the Attorney-General's Department stated that in interpreting the 'good faith' requirement:

a court is likely to apply a broad interpretation of the good faith requirement encompassing both subjective considerations (the person making a statement of belief considers they are behaving honestly and with a legitimate purpose), as well as objective considerations (the person has taken a conscientious approach to honouring the values asserted by the Bill, which may include considering the harm that may be caused by their speech given the overall purpose of the Bill.<sup>220</sup>

6.122 As to the requirement that beliefs be 'genuinely' held, the Attorney-General's Department stated that:

the definition of a statement of belief in this Bill would also require a court to do more than merely accept a person's claim that their statement satisfies the requirements of the definition. A statement must be of a belief that a person 'genuinely considers to be in accordance with the doctrines, tenets, beliefs or teachings of that religion' or 'genuinely considers to relate to the fact of not holding a religious belief'. A court is likely to interpret this requirement as involving an inquiry into whether a person's beliefs are sincerely held (for example, consistent with the person's past statements or personal behaviour). A court would be particularly concerned to determine whether a person's statement was a mere artifice to, for example, claim special rights or avoid responsibility.<sup>221</sup>

6.123 The safeguard value of this requirement depends on how the concepts of 'good faith' and 'genuinely considers' are interpreted and applied in practice, as discussed in Chapter 4.<sup>222</sup> The subjective nature of these concepts may mean that they are broadly interpreted and difficult to refute (see above at paragraphs [6.50]–[6.51]). While the Attorney-General's Department stated that a court would consider whether a statement was an artifice to avoid responsibility, such a consideration is not required as a matter of law under the bill.

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219 Religious Discrimination Bill 2021, statement of compatibility, p. 26.

220 Attorney-General's Department, *Submission 191*, p. 12.

221 Attorney-General's Department, *Submission 191*, p. 12.

222 In another context, in considering manifestations of religion, the European Court of Human Rights has held that in order to count as a 'manifestation' within the meaning of the right to freedom of religion, the act in question must be 'intimately linked' to the religion or belief, having a 'sufficiently close and direct nexus between the act and the underlying belief'. This will be determined on the facts of each case. The court noted that there is no requirement to establish that a person acted in fulfilment of a duty mandated by their religion. See *Eweida & Ors v The United Kingdom*, European Court of Human Rights, Applications Nos. 48420/10, 59842/10, 51671/10 and 36516/10 (2013) [82].

6.124 Regarding subclause 12(2), the terms 'harass', 'threaten' and 'intimidate' are intended to be interpreted in accordance with their ordinary meaning.<sup>223</sup> The term 'vilify' is defined in the bill to mean incite hatred or violence towards a person or group of persons.<sup>224</sup> The explanatory memorandum states that speech that is offensive or insulting but does not incite hatred, violence or contempt is not vilification.<sup>225</sup> To assist with interpretation, the explanatory memorandum provides examples of behaviour that could constitute vilification, including speaking about a person's race or religion in a way that could make other people hate or ridicule them.<sup>226</sup> This provision would likely operate as an important safeguard and may also assist Australia to realise its obligation under article 20 of the International Covenant on Civil and Political Rights, which provides that any manifestation of religion or beliefs must not amount to propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.<sup>227</sup>

6.125 Finally, the extent to which the measure allows for competing limitable rights to be balanced is an important factor in assessing proportionality (as outlined in Chapters 2 and 4). The Attorney-General's Department were of the view that an appropriate balance between rights had been struck, including by ensuring the relevant provisions (clauses 12 and 15) are limited in their application and subject to various safeguards. They stated:

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223 Religious Discrimination Bill 2021, explanatory memorandum, p. 57.

224 Religious Discrimination Bill 2021, subclause 5(1).

225 Religious Discrimination Bill 2021, explanatory memorandum, p. 57.

226 Religious Discrimination Bill 2021, explanatory memorandum, p. 57. See also Attorney-General's Department, answer to written question on notice, question 12 (received 11 January 2022).

227 Regarding states' obligations under article 20, the Special Rapporteur has stated: 'States may wish to review legislation prohibiting any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, so as to ensure that the legislation is explicit in its definitions, in particular of the terms: (a) "hatred" and "hostility", which should refer to "intense and irrational emotions of opprobrium, enmity and detestation towards the target group"; (b) "advocacy", which should be understood as requiring an intention to publicly promote hatred towards the target group; and (c) "incitement", which should refer to statements about national, racial or religious groups that create an imminent risk of discrimination, hostility or violence against persons belonging to those groups. Furthermore, States may wish to ensure (d) that the promotion, by different communities, of a positive sense of group identity does not constitute "hate speech". See UN Human Rights Council, *Report of the Special Rapporteur on freedom of religion or belief*, A/HRC/40/58 (2019) [34].

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Clause 12 has been specifically developed to balance between the rights of freedom of religion and freedom of expression with other rights, and is subject to appropriate limitations.<sup>228</sup>

6.126 The Attorney-General's Department were of the view that applying the test of reasonableness, necessity and proportionality under international human rights law was not appropriate as it would not 'provide the certainty required to create an environment conducive to good faith discussions of religious belief'.<sup>229</sup> The measure, as currently drafted, does not allow for a balancing exercise to occur. As discussed in Chapter 4, it is not clear that the objects clause (which refers to the indivisibility and universality of human rights, and their equal status in international law) would necessarily facilitate this balancing exercise in practice. Thus, in the absence of the ability to consider the individual circumstances of the case, particularly where vulnerable persons are involved, and balance competing human rights, there appears to be a risk that the measure may not be proportionate in all circumstances.<sup>230</sup>

6.127 In conclusion, in affording greater protection to people to make statements of belief, the measure promotes the right to manifest religion and the right to freedom of expression. However, insofar as the measure overrides existing federal, state and territory anti-discrimination laws and so has the effect of making otherwise discriminatory behaviour lawful, it may engage and limit the right to equality and non-discrimination if such behaviour were to also constitute discrimination under international human rights law, and there are questions as to whether this would be a permissible limit. It is noted, however, that many statements of belief made pursuant to clause 12 are unlikely to rise to the level of actionable discrimination under international human rights law, noting that the right to freedom of expression protects offensive and insulting statements.

### **Committee view**

6.128 The committee considers it important that all people in Australia be able to exercise their right to freedom of expression. The right to freedom of religion is strongly linked to the right to freely express and manifest one's religious beliefs. Religion is a fundamental part of Australia's strong and diverse social fabric, and a person's religious belief, or lack of belief, is often of significance to them to their identity, sense of self and the manner in which they live their lives.

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228 Attorney-General's Department, answer to written question on notice, question 1 (received 11 January 2022).

229 Attorney-General's Department, answer to written question on notice, question 8 (received 11 January 2022).

230 The vulnerability of the individuals involved is a relevant factor. International human rights law jurisprudence has held that 'religious liberty' cannot be invoked to justify discrimination against vulnerable groups, including women, girls and LGBTIQ+ persons. See UN Human Rights Council, *Report of the Special Rapporteur on freedom of religion and belief*, A/HRC/37/49 (2018) [40].

6.129 The committee has heard evidence that, increasingly, people of faith feel constrained in what they can express in relation to their religious beliefs – beliefs which form a core component of who they are. The committee considers it important that individuals can feel free, in good faith, to explain, discuss, share and express these deeply felt beliefs. Clause 12 seeks to do this by stating that a moderate statement of belief should not amount to discrimination. The committee considers this strongly promotes not only the right to freedom of religion, but also the related right to freedom of expression.

6.130 However, the committee also acknowledges that clause 12 is contentious and that numerous submitters raised concerns about the range of statements that could be protected by clause 12 and the impact of such statements on certain groups, in particular LGBTIQ+ individuals. There was evidence of significant confusion among submitters and witnesses as to the scope of clause 12 and how it would operate in practice. The committee notes that many submitters and witnesses gave examples of statements that would be protected by clause 12 – yet the committee considers few of these statements would be protected in reality. The committee notes that clause 12 includes some vital safeguards to ensure that only reasoned statements will be protected. In particular, the committee considers it important to note that any statement, in order to be protected, must be made in good faith, and cannot be malicious; threatening, intimidating, harassing or vilifying; or promote the commission of a serious offence. The committee additionally considers there are few statements that, in and of themselves, would currently be considered to be discriminatory. As such, paragraph 12(1)(a) operates, in the main, to give reassurance to people of faith that they are able to make moderately expressed statements of religious belief and faith. However, to alleviate some of the confusion surrounding clause 12, the committee considers that it would be of assistance if the explanatory memorandum was amended to provide greater clarity about what sort of statements or actions may or may not be considered to not constitute discrimination.

6.131 The committee notes that the Tasmanian Anti-Discrimination law has an extremely broad application and prohibits conduct that 'offends, humiliates, intimidates, insults or ridicules' another person on a protected ground. This is the only provision of this nature in anti-discrimination law in Australia. The committee considers it likely that the Tasmanian law breaches the rights of Tasmanians to freedom of expression by capturing such a broad range of speech. This view was supported by a number of submitters and witnesses who were concerned about the overreach of the Tasmanian law. Nevertheless, the committee acknowledges that there were others who were supportive of the broad scope of the Tasmanian law and were concerned that overriding it would adversely impact other rights. Taking into account these different views, the committee considers that, on balance, by ensuring that a statement of belief will not contravene the Tasmanian law, the federal government is upholding its obligations to protect and promote the right to freedom of expression and religion for all Australians.



6.132 The committee also considers it important to protect people of faith from discrimination by qualifying bodies in the imposition of qualifying body rules (for example, a university conferring a degree, which is required for the practice of a profession, would not be able to discriminate against a student for making a moderate statement of belief). It also includes an important qualifier that there will be no discrimination if compliance with the rule is an essential requirement of the profession, trade or occupation. This clause is appropriate, as a person of faith, whose moderately expressed views, while perhaps offending some, should not deny a person the means to pursue their chosen career. The committee notes that a number of witnesses and submitters expressed confusion as to how these rules would operate in practice, in particular in relation to existing professional requirements, and as such guidance should be developed to help alleviate these concerns. The committee also considers there should be greater clarity as to the interaction between clauses 14 (indirect discrimination) and 15 (qualifying body conduct rules).

6.133 The committee notes that the bill provides that the Australian Human Rights Commission must conduct a review into the operation of this legislation, no later than two years after its commencement. Noting these provisions are somewhat unique in the legislative landscape and given its relationship to the protection of fundamental human rights, the committee would urge future governments to monitor the impact of this legislation on society and individuals and continually review this significant piece of legislation.

6.134 However, ultimately the committee remains of the view that the passage of these bills remains central to remedying the weakness in our existing anti-discrimination legislation, and to protecting the fundamental right to freedom of religion, conscience and belief.

#### **Recommendation 9**

**6.135 The committee recommends that the government consider providing further explanation and examples with respect to clause 12 in the explanatory memorandum accompanying the Religious Discrimination Bill 2021, to provide greater clarity about what sort of statements or actions may, or may not, be considered to not constitute discrimination.**

#### **Recommendation 10**

**6.136 The committee recommends guidelines relevant to qualifying body conduct rules in clause 15 are developed in consultation with relevant professional bodies.**

#### **Recommendation 11**

**6.137 The committee recommends that the government give consideration to amending the explanatory memorandum, or clause 14 of the Religious Discrimination Bill 2021 to add a legislative note, to clarify that it may be indirect discrimination for a qualifying body to impose a qualifying body conduct rule that**

restricts or prevents a person from expressing their religious beliefs, unless the qualifying body can demonstrate the rule is reasonable.

**Recommendation 12**

**6.138** The committee recommends that, following implementation of the recommendations in this report, the Religious Discrimination Bill 2019, the Religious Discrimination (Consequential Amendments) Bill 2021, and the Human Rights Legislation Amendment Bill 2021 be passed.

**Dr Anne Webster MP**

**Chair**