

Dissenting report by Australian Greens member

Recommendation 1

- 1.1 That further consideration of the bills be delayed until:**
- (a) an appropriate consultation process has been undertaken, and**
 - (b) until the *Sex Discrimination Act 1984* has been amended to provide protection for LGBTIQ+ students.**

Recommendation 2

- 1.2 That clause 12 be removed in its entirety.**

Recommendation 3

- 1.3 The Australian Government should work towards full implementation of the United Nations Declaration on the Rights of Indigenous Peoples into Australian domestic law.**

Recommendation 4

- 1.4 That the current bills not proceed.**

Recommendation 5

- 1.5 That the Australian Government develop a Charter of Rights, to protect religious belief amongst other protected attributes.**

Recommendation 6

- 1.6 That any new Religious Discrimination bill adopt a similar approach to other anti-discrimination legislation, operating as a shield not a sword.**

The importance of protecting human rights

1.7 The Australian Greens want greater international respect for and protection of human rights, and for Australia to ratify and adhere to, both locally and abroad, all human rights conventions. That should include an Australian bill of rights that incorporates Australia's international human rights obligations into domestic law.

1.8 In line with that commitment to human rights, the Australian Greens support legislation that protects the rights of people to hold and practice their religious beliefs.

1.9 There are, however, significant shortcomings in the process that has led to the development of the Religious Discrimination Bill 2021 ('the Bill') and associated bills ('the package of Bills'), which are reflected in the significant flaws in the bill as introduced.

The flawed process to date

Limited time for Parliamentary scrutiny

1.10 A significant number of submissions noted that despite releasing exposure drafts two years ago, in 2020, the inquiry process for the package of Bills introduced into the Parliament has been extremely short. This has made consultation for many organisations difficult, particularly amidst the ongoing challenges of the pandemic.

1.11 As the Law Council of Australia noted:

The Law Council regrets the short inquiry timeframes for these bills, particularly noting that they fall over the summer holiday period. It recognises that these timeframes are largely outside the control of parliamentary committees. Its constituent bodies are concerned that the timeframes for responding to such complex legislation are not reasonable, and that their volunteer members have not had the capacity to consider all of the issues or provide a comprehensive response.¹

1.12 Representatives of People With Disability Australia noted that due to the short period for the inquiries, they had not been able to undertake adequate consultation with their members.² Similarly, the Australian Discrimination Law Experts Group noted that:

The time available for submissions to this parliamentary inquiry has been very short and there have been no accessible format materials made available by the Australian Government to ensure that people with disabilities that affect their communication needs can fully engage with this legislative process. Despite this, the current (and previous exposure draft processes) have not provided sufficient time for effective engagement by people with disability or ensured that information, etc, was provided in accessible formats. This has prevented many people with disability from exercising their article 29 rights to participation in political and public life.³

1.13 The rushed process for this current bill contrasts especially poorly with the longer consideration given to other bills, which received a longer, more appropriate period of parliamentary consideration and scrutiny; in the most recent instance, the bill to establish the Age Discrimination Act was introduced on 26 June 2003, and following a Parliamentary inquiry, passed almost a year later, on 15 June 2004.

1.14 While exposure drafts were released two years before the introduction of the bill, the Government showed little effort at genuine consultation, as reflected in the

1 Law Council of Australia, *Submission 28*.

2 Legal and Constitutional Affairs Committee, Inquiry into the Religious Discrimination Bill 2021 [Provisions]; Religious Discrimination (Consequential Amendments) Bill 2021 [Provisions] and Human Rights Legislation Amendment Bill 2021 [Provisions], *Committee Hansard*, 21 January 2022.

3 Australian Discrimination Law Experts Group, *Submission 33*.

bills as introduced. Large numbers of submissions which raised significant concerns, including from State and Territory governments, were ignored or disregarded. There was no public consultation process, or transparency about how consultation forums were organised.

Comparison with other policy commitments

1.15 As outlined earlier in this dissenting report, the Government's approach to this Bill has been rushed and lacked adequate consultation. Despite the push to ensure this Bill is considered quickly, without adequate consultation, the Government has failed to deliver on other long-held commitments, including the much-delayed promises to amend the *Sex Discrimination Act 1984*.

1.16 In October 2018, the Prime Minister was asked what he would say to gay teens who faced the threat of expulsion from schools because of their sexuality. The Prime Minister said that he "understands and is going to take action to fix it".⁴ More than three years later, no action has been taken and no amendments introduced. The proposed review by the Australian Law Reform Commission⁵ is set to report a year after the passage of any Religious Discrimination Bill, meaning that in the intervening period between the Prime Minister's promise and the reporting date, an entire cohort of students will have entered high school and graduated.

Recommendation 1

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- (b) until the *Sex Discrimination Act 1984* has been amended to provide protection for LGBTIQ+ students.**

Flaws in the government's proposed bill

Implementation of international agreements

1.18 A number of submissions have noted that the approach of the Bill to implementing recommendations from the International Covenant on Civil and Political Rights raise significant concerns.

1.19 As Associate Professor Luke Beck outlined:

It is not consistent with international human rights law to give greater protection to religious beliefs than to non-religious beliefs ... Because the definition of statement of belief (i) very clearly discriminates between religious and non-religious people and between religious and non-religious beliefs and (ii) does not ensure the enjoyment of rights freedoms on an

4 The Hon Scott Morrison MP, [Media release](#), 13 October 2018.

5 [Review into the Framework of Religious Exemptions in Anti-discrimination Legislation](#).

equal footing, there is a sufficient basis for a conclusion that the provisions of the Bill dealing with statements of belief are inconsistent with international human rights law.⁶

1.20 Similarly, Professor George Williams stated in his submission that:

I also have concerns about the Bill on free speech grounds. In his second reading speech to the Bill, the Prime Minister highlighted the need to protect four fundamental freedoms:

“The freedom to worship is not merely the freedom to believe.

It's the freedom to think. It is the freedom to exercise our conscience.

It is the freedom to doubt.

Indeed, it's the freedom not to believe.”

These freedoms are inseparable, but the Bill fails to reflect this. Statements of belief in the Bill only encompass statements relating to a religious belief or a belief relating to the fact of not holding a religious belief. In other words, it only protects statements connected to religious belief. No protection is provided other beliefs, such as matters of conscience.

This is inconsistent with article 18 of the International Covenant on Civil and Political Rights. It does not separate out religious speech for protection, but instead provides that:

Everyone shall have the right to freedom of thought, conscience and religion. By contrast, the Bill provides an elevated status to religious speech but fails to protect speech on matters of thought or conscience.

The consequence of this is that a person may make a statement, perhaps about another group or expressing a belief such as pacifism, but the statement will only receive protection if it has a religious basis. A person making exactly the same statement as a matter of conscience without a religious basis will receive no protection. This Bill prioritises religious speech over other forms of speech in Australia. This is deeply problematic in a secular nation. It also finds no basis in the international human rights conventions that the Bill purports to implement.⁷

1.21 Ms Kate Eastman, Law Council of Australia, stated:

While article 18 of the International Covenant on Civil and Political Rights recognises the freedom of religion, that freedom comes with certain exceptions, and the exceptions are part of the way in which one looks at the character of the right and the extent to which Australian law reflects that relevant international law. The second point is that article 18 of the ICCPR cannot be read and considered in isolation in the context of the human

6 Associate Professor Luck Beck, *Submission 38*.

7 Professor George Williams AO, *Submission 1*.

rights law, and, to the extent that this bill gives precedence to article 18 rights and freedom of religion, to the [inaudible] important rights in the ICCPR, particularly equality and nondiscrimination on a range of grounds, then, in that respect, the question of whether the bill would be [inaudible] by the international law is a live issue, and we agree with Professor Twomey's submissions in this respect.⁸

1.22 In turn, the failures in implementing international law have implications for the constitutionality of the bill. As Constitutional law expert Professor Anne Twomey submitted

From a constitutional point of view, therefore, s 51(xxix) would not support the Bill if the provisions of the Bill were substantially inconsistent with the ICCPR as a whole, including the other rights and freedoms the ICCPR declares, taking into account that article 18 of the ICCPR states that the right to freedom of religion may only be limited where it is necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.⁹

1.23 Similarly, Associate Professor Luke Beck concluded:

As noted at 1.2 above, it appears that key provisions in the Bill are inconsistent with international law. Accordingly, to the extent that the statements of belief 'sword' provisions or particular applications of those provisions rely for their validity only on the external affairs power there must be significant constitutional doubt that those provisions or those applications are constitutionally valid.¹⁰

Constitutional issues associated with the override of state and territory legislation

1.24 Unfortunately, the constitutional issues associated with the implementation of international agreements are not the only constitutional flaws in the bill's drafting. As Professor Anne Twomey noted:

Where the Commonwealth has the power to enact a valid Commonwealth law, s 109 of the Constitution provides that the Commonwealth law will prevail over any inconsistent State law, to extent of the inconsistency. The State law is rendered inoperative to the extent that it is inconsistent with the Commonwealth's law. If the inconsistency later disappears because the Commonwealth has repealed or amended its law, the previously inconsistent part of the State law again becomes operative.

8 Legal and Constitutional Affairs Committee, Inquiry into the Religious Discrimination Bill 2021 [Provisions]; Religious Discrimination (Consequential Amendments) Bill 2021 [Provisions] and Human Rights Legislation Amendment Bill 2021 [Provisions], *Committee Hansard*, 20 January 2022.

9 Professor Anne Twomey, *Submission 47*.

10 Associate Professor Luck Beck, *Submission 38*.

Section 109 only operates in relation to an inconsistency between valid Commonwealth and State laws. It does not confer upon the Commonwealth Parliament a power to repeal State laws or alter State laws or affect the interpretation of State laws or prohibit the State from enacting certain laws. The Commonwealth Parliament has no legislative power to interfere in State laws in this way ...

The Commonwealth Parliament could, however, enact a law that empowers a person to do X notwithstanding the operation of any State law, or the operation of specified State laws. This would create a direct inconsistency between the laws (i.e. the Commonwealth law empowers a person to do X and the State law prohibits it or limits the power to do X). Section 109 would then operate so that the Commonwealth law prevailed and the State law was inoperative to the extent of the inconsistency.

The problem with ss 11 and 12 of the Religious Discrimination Bill is that they do not follow this path of creating an inconsistency by stating that a person is authorised to do X despite a State law. Instead, s 11 purports to alter the effect of the application of a State law by stating that 'A religious body that is an educational institution does not contravene a prescribed State or Territory law if' the body does X in a particular manner. But it is not within the Commonwealth Parliament's power to legislate to control the legal operation of a State law, including what conduct contravenes a State law. All it can do is enact its own law which gives rise to an inconsistency (eg by authorising the religious body to do X in a particular manner despite the operation of a State law), rendering the State law inoperative to the extent of the inconsistency. If the State law is inoperative, there can be no contravention of it. But this outcome arises because of the inconsistency, not because the Commonwealth Parliament can legislate to determine which actions contravene a State law and which do not.¹¹

1.25 Similarly, Associate Professor Luke Beck concluded that:

While federal laws can override State laws in some circumstances, federal laws cannot alter or amend State laws ... Section 12(1)(a) purports to control the content of State laws rather than simply overriding the operation of State laws. This is bad legislative drafting and the result is that section 12(1)(a) is most likely unconstitutional.¹²

Overriding state and territory law will limit access to justice

1.26 Even beyond the issues of constitutionality, the override of state and territory law in clause 12 and other parts of the bill is unprecedented and profoundly concerning. As the Australian Discrimination Law Experts Group noted:

11 Professor Anne Twomey, *Submission 47*.

12 Associate Professor Luck Beck, *Submission 38*.

This Bill is the first instance that provisions in a federal discrimination law in Australia have been drafted to explicitly override and weaken other federal, state and territory discrimination laws. It has never previously occurred in over forty years of discrimination laws in Australia, yet in this Bill there are two examples of such overrides. Australia's legislative framework is designed to create two concurrent systems of discrimination law—federal, and state/territory—that can operate alongside each other. This is reflected in provisions made in every federal discrimination law explicitly stating that they do not exclude or limit the operation of state or territory laws that are capable of operating concurrently.

There has long been bipartisan consensus to maintain these complementary and concurrent discrimination law systems, which allow claimants to pursue appropriate causes of action, and allow states and territories to pass laws that reflect their own values and principles.¹³

1.27 Multiple submissions noted profound concerns at this approach to stripping away existing protections in antidiscrimination law at multiple levels around the country. The Australian Human Rights Commission stated that:

The Commission considers that the explicit overriding of all other Australian discrimination laws is not warranted, sets an alarming precedent, and is inconsistent with the stated objects of the Bill, which recognise the indivisibility and universality of human rights. By contrast, this provision seeks to favour one right over all others, and to additionally elevate one form of speech above others.¹⁴

1.28 The ACT Government stated in their submission:

The ACT and other stakeholders condemned these unprecedented override clauses in our previous submission, and are concerned that this has been retained in the current Bill ... There is no reasonable justification to elevate the right to freedom from religious discrimination and freedom of religious expression above other Federal freedoms from discrimination on the basis of sex, age, disability and race Further, this approach is contrary to the cooperative framework of discrimination law generally. It sets a dangerous precedent that the Federal government may seek to continue eroding robust, local discrimination protections in States and Territories, that reflect the will of residents of those jurisdictions. It is particularly concerning that the federal government may seek to do this through regulations rather than further legislation, reducing the amount of scrutiny on future parliamentary action seeking to extend religious freedom.¹⁵

1.29 Similarly, the Tasmanian government's submission stated:

13 Australian Discrimination Law Experts Group, *Submission 33*.

14 Australian Human Rights Commission, *Submission 97*.

15 ACT Government, *Submission 192*.

... while I can confirm the Tasmanian Government's support for prohibiting discrimination on the grounds of religious belief, I do wish to reiterate our concerns raised with the previous Commonwealth Attorney-General in relation to the provisions of the principal which appear to effectively invalidate the operation of the Tasmanian Anti-Discrimination Act, and specifically section 17(1) of that Act, to the extent that the conduct complained of amounts to a statement of belief ... I would like to reiterate that 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 Government, we continue to strongly advocate for no weakening of our Anti-Discrimination laws.¹⁶

1.30 These concerns were shared by the Australian Council of Human Rights Authorities, comprising key anti-discrimination officials in each jurisdiction, stating that the bill:

... undermines the coherence of Australia's anti-discrimination framework by overriding state and territory anti-discrimination legislation (cl 11 and 12).¹⁷

The impacts of clause 12

1.31 While the Bill has profound and extensive flaws, a key issue highlighted consistently in multiple submissions were the problems associated with clause 12.

1.32 As the Australian Discrimination Law Experts Group explained:

Clause 12 would have wide-ranging consequences in limiting liability for discrimination, vilification and otherwise harmful comments against others which target protected attributes. For instance, it is currently unlawful for a person in Tasmania to use a racial epithet or slur to offend, ridicule, insult, intimidate or humiliate another person on the basis of their race. Under clause 12, this behaviour would become lawful – but only for those who do so on the basis of a religious belief ...¹⁸

1.33 The Public Interest Advocacy Centre submitted that:

Religiously-motivated demeaning and derogatory comments will be protected in all areas of public life: in workplaces, in schools, colleges and universities, in hospitals and aged care facilities, on buses and trains, and in cafes, restaurants and shops.¹⁹

16 Tasmanian Government, *Submission 178*.

17 Australian Council of Human Rights Authorities, *Submission 125*.

18 Australian Discrimination Law Experts Group, *Submission 33*.

19 Public Interest Advocacy Centre, *Submission 40*.

1.34 In particular, the impacts of clause 12, in interaction with Australia's legal system, will profoundly reduce people's access to justice. As the Australian Discrimination Law Experts Group explained:

... the override of state and territory discrimination laws will significantly limit access to justice for victims of discrimination in Australia.

The overwhelming majority of discrimination claims are made through state and territory systems, rather than the federal system, largely owing to state and territory statutory authorities having a local presence and state and territory tribunals operating on a presumptive 'no costs' basis in the area of discrimination law. As such, a state and territory tribunal will not award the payment of an unsuccessful party's legal costs, other than in exceptional circumstances. However, state and territory tribunals are not Chapter III courts under the Commonwealth Constitution and cannot exercise federal jurisdiction or determine a federal question of law. A matter will involve the exercise of federal judicial power if a party has a defence that owes its existence to a law of the federal Parliament.²⁰

1.35 Similarly, the Public Interest Advocacy Centre noted that this flaw remained in the Bill as introduced, despite being raised repeatedly in submissions on the exposure drafts:

It is therefore extremely disappointing this significant flaw remains in the final version of the Bill.

It undermines one of the primary advantages of the existing anti-discrimination framework – that State tribunals offer a no-cost/low-cost, accessible option for people affected by discrimination to have their complaints resolved (and indeed a no-cost/low-cost method for respondents to have matters resolved too).

By requiring that matters involving statements of belief defence be resolved only by courts, all parties will see their costs increase, as well as other impacts in terms of resources and timeliness. This will put the ability to make a discrimination complaint out of reach for many people.

The statement of belief provision will therefore deny access to justice to the groups who are most likely to experience discrimination, including women, people with disability, LGBTI people and people of minority faiths.²¹

1.36 The Australian Human Rights Commission shared this concern, stating:

There is a further reason why the introduction of a new federal defence to all Australian discrimination laws is problematic. It is likely to lead to

20 Australian Discrimination Law Experts Group, *Submission 33*.

21 Public Interest Advocacy Centre, *Submission 40*.

increased time, cost and complexity where this Commonwealth defence is relied on in matters brought in State and Territory tribunals.²²

1.37 The Australian Greens support the concerns highlighted in the main Committee report in relation to the impact of clause 12, including that:

... 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.

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 ... 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.

...

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 ... 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.

1.38 The Australian Greens strongly disagree with the statement in the main Committee report, arguing in relation to Tasmanian anti-discrimination protections, 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

22 Australian Human Rights Commission, *Submission 97*.

protect and promote the right to freedom of expression and religion for all Australians.

1.39 In fact, extensive evidence to the Committee from a wide range of human rights and other organisations in Tasmania indicated broad community support for those protections in Tasmanian law, as well as from the Tasmanian government. The evidence provided to the Committee indicates that the Tasmanian legislation provides an important benchmark in protecting human rights, and sets the standard for other jurisdictions around Australia. The main Committee report adopts a wilful and ideological disregard for the evidence in pursuit of an agenda, at the cost of human rights protections in Tasmania and elsewhere.

Recommendation 2

1.40 That clause 12 of the Religious Discrimination Bill 2021 be removed in its entirety.

The extension of human rights law to corporations

1.41 Another unprecedented component of the bill is the expansion of protections provided by human rights law from humans, to corporations. As the Australian Human Rights Commission noted:

It is axiomatic that only humans have human rights. However, the Bill takes the highly unusual step of enabling corporations to make claims of religious discrimination. This would permit corporations to bring proceedings against people (or other organisations) and allege that they have been discriminated against ...

International law and the domestic law of comparable jurisdictions makes clear that human rights law protects only humans. This principle has been adhered to in all of Australia's federal, state and territory human rights laws, including the existing federal discrimination laws. In the Commission's view, there is no justification for the Bill to depart from this settled and fundamental principle.

Corporations cannot possess innately human qualities, such as dignity, which human rights law is designed to protect. More specifically, corporations have 'neither soul nor body' and cannot have a religious belief that is somehow disconnected from the religious belief of an individual or group of individuals that are involved with the corporation. The legitimate rights and interests of corporations can be, and are, legally protected in other ways—for example, in statutes dealing with competition law.²³

1.42 Similarly, the Australian Council of Human Rights Authorities noted their concern that the Bill:

23 Australian Human Rights Commission, *Submission 97*.

... departs from anti-discrimination law by enabling body corporates and religious bodies or institutions protections against discrimination, ordinarily provided only to individuals (cl 16). For example, if an employee of a company with a religious belief makes a statement of belief that is offensive, and a supplier terminates their supply arrangement with the company because the supplier found the remarks offensive, the employing company could possibly make a complaint of discrimination against the supplier, on the grounds that the company is an associate of the employee with the religious belief.²⁴

Exceptions for religious bodies are too broad

1.43 A further failure of the drafting is that rather than adopting a standard anti-discrimination approach, the Bill provides extremely broad exemptions for religious organisations, enabling them to engage in religious discrimination. As the Australian Human Rights Commission noted:

the Bill provides very broad exemptions that allow ‘religious bodies’ to engage in religious discrimination ... broad exemptions that allow religious bodies to engage in religious discrimination across a range of areas of public life undermines the rationale for the introduction of the Bill ... The breadth of exemptions available is particularly concerning when it comes to schools, and other religious educational institutions.²⁵

1.44 The Australian Council of Human Rights Authorities concurred that the Bill:

... provides religious bodies with broader freedom to discriminate against people of different or no faith (cl. 9). For example, contrary to some state and territory anti-discrimination law, it will not be discrimination for religious bodies such as educational institutions, hospitals, aged care facilities, certain accommodation providers, religious camps and conference sites to seek to preserve a ‘religious ethos’ among staff by making faith-based decisions in relation to employment.²⁶

1.45 The Law Council of Australia shared those concerns, stating:

The Bill is also unorthodox as it begins, under Part 2, by permitting a wide range of conduct that will not constitute discrimination on the grounds of religious belief or activity, and will not engage its prohibitions on discrimination in key areas of public life. Several of its provisions are overly broad in scope. The Law Council is concerned that Part 2, as drafted, will undermine the Bill’s core objects of eliminating discrimination against persons on the ground of religious belief or activity in a range of areas of

24 Australian Council of Human Rights Authorities, *Submission 125*.

25 Australian Human Rights Commission, *Submission 97*.

26 Australian Council of Human Rights Authorities, *Submission 125*.

public life, and ensuring equality before the law, regardless of religious belief or activity. It considers that Part 2 should be removed.²⁷

This bill will have a devastating impact on people's lives

LGBTIQ+ communities

1.46 The Religious Discrimination Bill in its current form has devastating impacts on several socially marginalised communities that we have heard from, across the hearings. The Bill has the ability to act to the detriment of hard-fought protected rights of women, people with disabilities, LGBTQIA+ people, the elderly, and other communities to be treated with respect, dignity and equality.

1.47 As highlighted by Equality Australia, the Bill seeks to:

allow people to discriminate against others by protecting offensive, derogatory and demeaning statements based in or about religion in the places we work, study and access goods and services ... [and] protect religious beliefs and activities of people and organisations in ways that do not adequately protect the rights of others.²⁸

1.48 The right to practice one's religion should not come at the cost of harm to socially marginalised groups or overriding hard-fought discrimination protections. As it stands, the Bill has the potential of causing harm to the health and safety of LGBTQIA+ people. According to LGBTQIA+ Health Australia:

Australian research ..demonstrate(s) that exposure to religious anti-gay prejudice (the disapproval of homosexuality on religious grounds) predicted higher levels of anxiety, depression, stress, and shame; more harmful alcohol use; and more instances of both physical and verbal victimisation.²⁹

1.49 LGBTQIA+ Health Australia also noted that this Bill:

“provides the possibility that older LGBTI people will be forced to use aged care services provided by faith-based organisations where discrimination against them will be lawful”.³⁰

1.50 This fear reflects LHA's consultations to report on the Royal Commission into Aged care Quality and Safety, where:

many people reported experience of discrimination and exclusion where workers express and act on faith-based convictions that being LGBTI is sinful. Participants reported being actively told to suppress their identity and experienced loss of connection with their LGBTI community.

27 Law Council of Australia, *Submission 28*.

28 Equality Australia, *Submission 31*.

29 LGBTQIA+ Health Australia, *Submission 156*.

30 LGBTQIA+ Health Australia, *Submission 156*.

1.51 The Bill also essentially offers a freedom from consequence to spewing hateful comments against members of the LGBTIQ+ community. Equality Australia, endorsed by other peak LGBTIQ+ bodies, explained that:

Section 15 of the Religious Discrimination Bill will allow people who wish to express prejudiced, harmful or dangerous views based in or about religion to do so without facing consequences for their conduct even when it impacts on other employees, clients or customers or diminishes public trust in a profession. These provisions undercut the ability of professional bodies to promote inclusive and respectful workplace cultures by putting them in complex legal straitjackets with a test that is one-sided, and almost impossible to apply or understand, let alone meet.³¹

1.52 The LGBTIQ+ community has fought for their rights for a long time, and there is a long journey still remaining to ensure full equality before the law. This Bill is a huge step backward, undermining the rights and freedoms of LGBTIQ+ community to exist and express their identity.

1.53 Mental Health Australia also notes that:

... statistics show a clear need to reduce stigma, prejudice and discrimination, the Religious Discrimination Bill has the potential to further increase the stigma and discrimination experienced by LGBTIQ+ people resulting directly in further deterioration of their mental health ... Increase in stigma is also likely to have a direct impact on the willingness of LGBTIQ+ people experiencing mental health difficulties to seek help. Without appropriate treatment, mental health conditions are likely to deteriorate.³²

Women

1.54 The Australian Women's Health Network similarly noted significant concerns about the impact of the bill on women's rights, and the potential to erode and undermine key protections. As noted in their submission:

The Bill will most certainly reduce access to sexual and reproductive health services for women and men which is already an area of health that is highly stigmatised and has a higher level of conscientious objectors.

The Bill will affect access to sexually transmitted infection screening and prevention, contraception and abortion, genomic screening to prevent chronic illness, fertility treatments and maternal healthcare, all of which are vital public health services. There will also be broader impacts for gender equity and measures that prevent abuse and violence such as relationships

31 Equality Australia, *Submission 31*.

32 Mental Health Australia, *Submission 67*.

and sexuality education, respectful relationships education and responses to abuse, including institutional child sexual abuse and exploitation.³³

1.55 In the workplace, where women experience high rates of sexual assault and harassment, the impact of this Bill will be particularly devastating. Victorian Trades Hall Council noted:

Every day we see new examples of the harms of sexual harassment and gendered violence. Yet this Bill would protect a range of Statements of Belief that would widely be considered examples of sexual harassment or gendered violence. VTHC believes that every person deserves to feel safe at work, yet this Bill would seek to deny women workers protection from gender-based hostility at work.

1.56 Faith-based community service organisations are amongst the largest providers of support services for women and children, including crisis accommodation, counselling and financial support for those fleeing abusive relationships. A number of submitters (e.g Women's Health Network, WWDA), raised concern that allowing staff and volunteers within those faith-based organisations to make statements of belief regarding, for example, the sanctity of marriage or the right for a husband to control his partner, could discourage women from leaving dangerous situations. As Women With Disability Australia noted in their submission, such views:

instead of supporting women experiencing violence to access safety or leaving the relationship, could encourage reconciliation, which may further place them at physical and psychological harm, and serious injury or death.³⁴

1.57 The Centre for Women's Safety and Wellbeing also expressed concern that the Bill will:

allow workplaces, educational institutions, community and healthcare services and other parts of our community to foster cultures that are unsafe, unsupportive, non-inclusive, and working against efforts to achieve gender equality.³⁵

1.58 The Australian Women's Health Network shared the concern:

The concern with having the bill is that, while we have fought for years and years for gender equality and for women to have sexual and reproductive health rights and bodily autonomy as a human right, the new Religious Discrimination Bill, where statements of belief—and it just has to be a

33 Australian Women's Health Network, *Submission 83*.

34 Women With Disability Australia, *Submission 100*.

35 Centre for Women's Safety and Wellbeing.

statement of belief by a person—become protected, reinforces and pushes that trajectory and that advancement backwards, not forwards.³⁶

Disabled people

1.59 For people with disabilities living in Australia, this Bill poses threats to the *Disability Discrimination Act 1992*, and according to People With Disability Australia

will override existing federal, state and territory anti-discrimination laws by making so-called statements of belief immune from legal consequences under said Commonwealth laws.³⁷

1.60 The Bill, if enacted, will replace the ‘social model of disability’ upon which all pieces of disability policy and legislation current in Australia are based on through Australia’s ratification of the United Nations Convention on the Rights of Persons with Disability (UN CRPD), with the ‘religious model of disability’, where disability is often viewed as a ‘sin’. PWDA has reported:

This means that service providers will be able to refuse to accommodate people with certain disabilities within the providers' settings based entirely upon a subjective notion of good faith.³⁸

1.61 Children and Young People with Disabilities Australia (CYDA) uses anecdotal evidence from LivedX, a focus group they conducted for young LGBTQIA+ people with disabilities:

“I think this bill could kill people. If you grew up in a religious household who constantly told you, you were going to hell for your sexuality, and then suddenly a medical professional is legally able to? That feels like it could cause some significant mental health risks.³⁹

Multicultural communities

1.62 For multicultural communities across Australia, a key concern is that the rushed nature of this Bill has not allowed for appropriate community consultation. For example, the Federation of Ethnic Community Councils of Australia (FECCA) said:

The Bill review process has involved inadequate timeframe and inappropriate processes for public submission ...

Given the complicated nature of the proposed legislation, the timeframe given for this inquiry is inadequate and the process inappropriate.

The timeframe given to respond to this Bill has been exceedingly short for organisations and members of the public. Given this Bill has the potential to

36 Ms Hill, *Committee Hansard*, 13 January 2022.

37 People With Disability Australia, *Submission 79*.

38 People With Disability Australia, *Submission 79*.

39 Children and Young People with Disabilities Australia, *Submission 139*.

override existing anti-discrimination laws across the country, ample time should be available to ensure the public understand the implications.⁴⁰

1.63 FECCA also noted particular concerns about the online survey run by the Parliamentary Joint Committee on Human Rights, stating:

FECCA is concerned with the nature of the online survey allowing members of the public to express their views on the religious discrimination legislative package. The survey design appears to lead respondents to a predetermined outcome and how this reason we reject the validity of the results.

1.64 FECCA also expressed profound concerns about the Bill, urging that it not be passed:

The Religious Discrimination Bill 2021 poses a risk that people in Australia will lose discrimination protections at work, school and when accessing goods and services like healthcare to accommodate people who make discriminatory statements based on 'religious beliefs'. FECCA is concerned the Religious Discrimination Bill will open doors for discrimination by taking away existing anti-discrimination protections, including on the grounds of race, religion, sex, marital status, disability, sexual orientation, gender identity or intersex status.

As the peak, national body representing people in Australia from culturally and linguistically diverse backgrounds, FECCA rejects all forms of discrimination.

We urge the Committee to ensure any Religious Discrimination Bill does not remove existing discrimination protections. It must ensure all workers, students, customers and clients are equally protected from discrimination, no matter who they are, whom they love or what they believe. It must not privilege the rights and beliefs of one group over another.⁴¹

1.65 The Diversity Council Australia has expressed similar concerns, noting:

...this proposed legislation, as drafted, could stop Australian employers fostering inclusive cultures, eroding any business benefit derived from inclusion, ...[and] goes beyond protecting people from discrimination on the basis of religion and undermines protections afforded under other anti-discrimination legislation.⁴²

First Nations people

1.66 The rushed nature of the inquiries considering this bill also mean that there was inadequate time to fully scrutinise a number of issues raised in submissions on

40 Federation of Ethnic Community Council of Australia, *Submission 105*.

41 Federation of Ethnic Community Council of Australia, *Submission 105*.

42 Diversity Council Australia, *Submission 13*.

earlier drafts of the Bill. In particular, inquiries into this Bill have not had adequate time to scrutinise the protection provided to First Nations beliefs by the Bill, or ensure that they are adequate. For example, Democracy in Colour wrote in a submission on an earlier exposure draft:

It is particularly concerning that the Bill doesn't mention whether the cultural and spiritual practices of First Nations' people would be protected.⁴³

1.67 Similarly, the North Australian Aboriginal Justice Agency wrote in a submission on an earlier exposure draft:

NAAJA is further concerned that the Bill may not sufficiently or specially protect Aboriginal communities' belief and spirituality, particularly given the comments on Aboriginal spirituality made by the Religious Freedom Review Panel in its report dated May 2018. NAAJA notes the Panel's comment that further and specific consultation on the special protection of Aboriginal spiritual beliefs is necessary but has not yet taken place.⁴⁴

1.68 Given the importance of providing culturally appropriate protections for First Nations' belief, it is important that for any Bill to proceed it should be very clear that it is based on the principles outlined in the United Nations Declaration on the Rights of Indigenous Peoples and provides strong, culturally appropriate protections for First Nations belief systems in their full diversity across the continent.

Recommendation 3

1.69 The Australian Government should work towards full implementation of the United Nations Declaration on the Rights of Indigenous Peoples into Australian domestic law.

People of faith

1.70 While a number of religious communities have argued in support of the Bill, a number of others have opposed it on the basis of significant concerns. In particular, while many supported the broad attempt to protect people of faith, they noted that the approach adopted in this bill (including the flaws outlined above) will create significant problems.

1.71 For example, the Uniting Church in Australia Assembly outlined clear concerns, leading to an opposition to the Bill overall:

We commend the Australian Government for proposing to make religious belief and activity, as well as the absence of religious belief and activity, a

43 [Democracy in Colour submission to the Religious Discrimination Bill - Exposure Draft.](#)

44 [Northern Australian Aboriginal Justice Agency submission in Response to Proposed Legislative Reform on Religious Freedom.](#)

protected attribute in discrimination law at the federal level. However, based on our commitment to human dignity and the common good, the Uniting Church in Australia does not support provisions that would permit statements and actions that demean and unjustly diminish the rights of others on religious grounds. People should be able to enjoy their right to freedom of thought, conscience, religion and belief – however, the manifestation or expression of their religion and beliefs should not harm or demean others, nor should it be privileged over other rights.

We believe there are certain provisions in this Bill that actually increase the likelihood of discrimination against people of minority faiths and also people from more vulnerable groups within society. We believe it does this by privileging powerful religious voices at the expense of minority and vulnerable voices in society, which seems to be the exact opposite of its purpose, and by providing what we see as extraordinary and excessive religious exceptions. We are concerned such provisions could have the effect in the wider community of emboldening discrimination by providing an authorising environment for demeaning statements or actions. Rather than building harmony and tolerance it would have a corrosive effect on society ...

Ultimately, the Uniting Church believes the right to freedom of religion is vital to a diverse society but must always be balanced and bound together with the "due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

We do not believe the Bill, in its current form, achieves this balance and therefore would not support this Bill's progress into law.⁴⁵

1.72 Similarly, the Public Affairs Commission of the Anglican Church of Australia submitted:

We believe the RDB still gives too much unnecessary scope and encouragement for harmful discriminatory behaviour in the name of religion in a manner that unfairly overrides other equally important human rights to be free from discrimination.

We therefore urge that the RDB be amended as outlined below as we cannot support it in its current form.⁴⁶

1.73 The Hindu Council of Australia also noted significant concerns, and sought amendments to the Bill:

We are concerned that some provisions of the bill which exempt religion inspired organisations will restrict religious freedom rather than protecting

45 Uniting Church Australia, *Submission 152*.

46 Public Affairs Commission of the Anglican Church of Australia, *Submission 78*.

it. If the bill is passed as proposed, it will curtail religious freedom and its expression by the vulnerable older people, students and the unemployed.

We are concerned that provision of employment and services by religion inspired organisations will force vulnerable people to change their religion (against their own will) so that they can qualify to receive school admission, hospital admission, accommodation in aged care facilities and employment. This discrimination based on religion sanctioned by law will lead to exploitation of minority religions by powerful organisations being run by other religions.⁴⁷

1.74 The Buddhist Council of NSW similarly said:

We do not support this bill as it currently stands. Whilst we welcome limited protections for religious freedom, it is our view that the bill does not strike the right balance between religious freedom and the right to equal treatment and to be free from discrimination.⁴⁸

1.75 The Australian Sangha Association, representing Buddhist monks and nuns, echoed the importance of preventing religious discrimination, but outlined a broad range of concerns with the Government's approach in the current bill, concluding:

... the ASA believes that the Government has not adequately made the case for a Religious Discrimination Bill of this nature and the ASA wishes to put on record that it cannot support the present bill.⁴⁹

Workers in religious schools and institutions

1.76 The Bills also pose significant risks to people of faith who are employed as workers in religious schools and institutions. As the Independent Education Union noted in their submission:

The proposed provisions of ss 7 and 19 would operate as an effective exemption from the provisions of the Bill for religious educational institutions in employment. In doing so they would variously deny freedom of religion and religious expression to the employees of those institutions whose religious views differed from those of their employer, whether or not they were members of the same faith as that employer. This is both unnecessary and a direct negation of the human rights to freedom of religion and freedom of expression that the Bill purports to protect.⁵⁰

47 Hindu Council of Australia, *Submission 104*.

48 Buddhist Council of NSW, *Submission 18* to the Senate Legal and Constitutional Affairs Legislation Committee, Inquiry into the Religious Discrimination Bill 2021 [Provisions]; Religious Discrimination (Consequential Amendments) Bill 2021 [Provisions] and Human Rights Legislation Amendment Bill 2021 [Provisions].

49 Australian Sangha Association, *Submission 84*.

50 Independent Education Union, *Submission 127*.

1.77 The IEU outlined in powerful terms the risks that their members are already facing, simply in relation to public debate on the bill, before it extends the ability of institutions to discriminate against employees:

This Bill will do nothing however to prevent a small minority of employers in faith-based schools from continuing to discriminate against their employees. This capacity to discriminate will simply be extended, where it does not already exist, to include the capacity to discriminate on the basis of religious belief or not holding a religious belief.

We are particularly concerned that in the past three years some employers have utilised their immunity from prosecution to take adverse action against members in the context of the federal parliament considering legislation.

Following the referendum and subsequently the passage of the Marriage Amendment (Definition and Religious Freedoms) Act 2017 members, in many schools and in more than one state, were required to sign declarations presented to them that amended school charters and statements of faith to include terms stating that homosexuality and statesanctioned same sex unions were morally wrong. They were frequently disciplined and dismissed if they refused to do so.

In our submission to the Attorney General's Department in respect of the 2019 Bills we noted that it was of particular concern to the IEU that there had been requests from members for assistance following criticism of the draft Religious Freedoms Bills in IEU publications. Members were aggrieved that: they were directed by their employer to contact the union to ask that this content be removed; informed by their employer in various terms that they owed a primary duty to their employer to do so and threatened with disciplinary action by their employer if they did not. Identical grievances have been referred to us by members following the publication of the Religious Discrimination Bill 2021.

IEU members are still receiving warnings, losing salary and/or positions of leadership, being suspended from their employment and being dismissed solely for reasons directly associated with and attributable to their sex, sexual orientation, gender identity, marital or relationship status and/or pregnancy.⁵¹

Intersectionality

1.78 As the Diversity Council Australia notes:

Intersectionality refers to the ways in which different aspects of a person's identity can expose them to overlapping forms of discrimination and marginalisation. It is therefore critical when drafting and implementing anti-discrimination legislation that legislators, policymakers and those

51 Independent Education Union, *Submission 127*.

implementing such policies, understand intersectionality, and take an intersectional approach to implementing such policies.⁵²

1.79 This Bill, which prioritises religious rights over other rights to equality and anti-discrimination, ignores the multiple facets of one's identity, such as LGBTQIA+ people from multicultural and multifaith communities.

1.80 Similarly, the Australian GLBTIQ Multicultural Council noted:

...we [must] strike the right balance between protecting LGBTQ+ people from multicultural and multifaith backgrounds, so we can coexist as LGBTQ+ people of faith. We also support other diversities within the multicultural and multifaith communities so that they may also coexist.⁵³

1.81 The approach taken in drafting these Bills disregards the importance of intersectionality, creating a profound policy and legislative failure, and risking severe damage to multiple communities, as outlined throughout this submission.

Workplace impacts, including social cohesion

1.82 Everyone deserves to be safe in the workplace. Unfortunately, this Bill, as it currently stands, makes it difficult to protect everyone at work from discrimination. The Australian Council of Trade Unions (ACTU), while affirming 'work is absolutely central to human dignity and our ability to live a decent life', raised concerns about this Bill making workers susceptible to discrimination in their means of livelihood'. They explained that:

The RDB departs from the usual framework of anti-discrimination laws and introduces a series of untested concepts into discrimination law which are of uncertain effect. This will create a risk of increased confusion, conflict and harm in Australian workplaces. The RDB will increase, not decrease, the prospect of discrimination against workers on the grounds of their religious beliefs; it will increase job insecurity in religious organisations, and undermine workers' health and safety at work. We are extremely concerned that the RDB will impact negatively on employers' ability to meet existing duties to create safe, healthy, respectful and inclusive workplaces for all workers.⁵⁴

1.83 This Bill's placing of religious rights over other rights to equality and non-discrimination is also particularly concerning to workers, reports the ACTU:

It is contrary to the basic principles of human rights law to privilege one category of rights over another: in this case, the right to make religious 'statements of belief' over the right to equality and non-discrimination, particularly for women, LGBTQ+ people, people with disability, single

52 Diversity Council Australia, *Submission 13*.

53 Australian GLBTIQ Multicultural Council, *Submission 80*.

54 Australian GLBTIQ Multicultural Council, *Submission 80*.

mothers, and other groups susceptible to condemnation or discrimination on religious grounds. The RDB allows religious employers to discriminate against individual workers who have differing (or no) religious beliefs to their employer – even where religion is not relevant to the role – privileging the rights of religious employers over their workers.⁵⁵

1.84 Victorian Trades Hall Council echoed this concern and recorded in their submission:

The carve-out in the Bill to protect Statements of Belief, including those that are hostile, offensive, inappropriate and harmful, gives a green light to discriminatory language and actions. The low bar of what constitutes a Statement of Belief leaves significant scope for hostile and harmful statements made at work to become exempt from being identified as discriminatory. These provisions give workers limited access to external antidiscrimination bodies if they have been subject to hostile statements. This is especially harmful in situations where the employer is the alleged perpetrator of discrimination, where the use of internal processes would be prejudiced.⁵⁶

1.85 The National Tertiary Education Union also expressed a similar concern about discrimination against workers:

The RDB (section 7) also allows religious employers to discriminate against individual workers who have differing (or no) religious beliefs to their employer – even where religion is not relevant to their role – privileging the rights of religious employers over their workers. The rights to discriminate provided by the RDB extend not just to giving priority to applicants of a certain faith in recruitment practices, but to any kind of discrimination in employment on religious grounds, including refusing an existing staff member a promotion or a pay-rise, or terminating their employment.⁵⁷

The false dichotomy between people of faith and LGBTIQ+ communities

1.86 This Bill also places a false dichotomy between people of faith and LGBTIQ+ people. In reality, LGBTIQ+ communities of faith, who were engaged in little to no consultation in this rushed Bill, experience these conflicts in their lives and expressions of gender, sexuality, and faith, much to their detriment.

1.87 Statistically, according to Equal Voices, a national organisation of LGBTIQ+ people and allies from Christian faith backgrounds, LGBTIQ+ people with faith affiliations in Australia number over one million, and this population is most at risk from adverse outcomes if the Bill as framed, becomes law.

55 Australian Council of Trade Unions, *Submission 26*.

56 Victorian Trades Hall Council, *Submission 11*.

57 National Tertiary Education Union, *Submission 35*.

1.88 Equal Voices noted in their submission:

We are concerned that this Bill would further embolden those who currently wield so much institutional power, to wield this power to the detriment of ordinary Christians in churches and schools who find themselves the target of harassment and bullying for their sex, marital status, sexual orientation or gender identity - ordinary Christians who are there in every congregation and school, and who ask only to be accepted and supported in their faith journeys as they grow into the people they are called by God to be.⁵⁸

1.89 The Australian GLBTIQ Multicultural Council echoes this concern for LGBTQIA+ people from multicultural and multifaith backgrounds:

The legislative package fundamentally frames the right of LGBTQIA+ people to practice religion in diametric opposition to our LGBTQIA+ identities and intersecting identities, such as gender, race, culture and disability. We have a right to feel safe in all the communities we are a member of, and this legislative package threatens this.⁵⁹

Broad community opposition

1.90 The fundamental flaws in the Government's approach to this Bill are reflected in the broad, consistent concerns and opposition raised across an extremely diverse range of communities and organisations, in their evidence to inquiries on the bills.

1.91 As outlined throughout this dissenting report, an entire cross section of society opposes the provisions in these bills that would undermine human rights and provide a 'sword' for attacks on others. Concerns and oppositions have been expressed by unions, corporations, non-profit organisations, health organisations, legal experts, human rights advocates, as well as groups representing women, disabled people, LGBTQIA+ communities, multicultural communities, and large communities of people of faith.

1.92 The Australian Council of Trade Union noted in their submission:

... the ACTU remains deeply concerned about a number of provisions of the RDB, as well as the government's approach to these important matters. We are concerned that despite the changes made, the RDB will still hamper the ability of employers to create safe and healthy workplaces, as well as enabling and encouraging further unreasonable discrimination against workers by religious employers.⁶⁰

1.93 In their evidence to the Legal and Constitutional Affairs Committee, the Australian Industry Group confirmed that:

58 Equal Voices, *Submission 32*.

59 Australian GLBTIQ Multicultural Council, *Submission 80*.

60 Australian Council of Trade Unions, *Submission 26*.

We don't support the bill in its current form. But we recognise that this has been a longstanding policy position of the government, so we're not opposing a bill in this space, but we do think the bill needs to be amended to make it workable for workplaces.⁶¹

1.94 As a national peak body for the community services sector, ACOSS noted significant concerns, and recommended that the Bill not proceed:

We remain deeply concerned that this Bill, even with revisions made to the previous iteration, continues to privilege religious interests and beliefs over the rights, interests and beliefs of all other people in a way that creates a detrimental impact on the community overall ... Even with revisions, the Bill retains fundamental problems in its proposed approach to discriminations.⁶²

1.95 The Australian Medical Association noted that while the current Bill is an improvement on exposure drafts, there were still significant concerns, and that the Bill should only proceed if amended:

While the AMA welcomes the removal of provisions in relation to one of our major concerns being conscientious objection, other concerns have not been addressed in the Religious Discrimination Bill 2021, meaning the legislation maintains the potential to impact adversely on the medical profession and patient care ... The AMA strongly advocates that should the Bill proceed, it be further amended to reflect the AMA's recommendations.⁶³

1.96 The Public Health Association of Australia concurred, noting:

PHAA RECOMMENDS THAT THE BILLS NOT BE SUPPORTED, because of the potential to perpetuate a range of harm, vilification and discrimination in our society. The Bills may widen the gap in health status and access to health services for marginalised groups in society.⁶⁴

1.97 The Australian Federation of Aids Organisations agreed, arguing that:

... we are deeply concerned by the Bill because its provisions prioritise the religious beliefs of healthcare workers to the detriment of marginalised individuals and communities living with or at increased risk of HIV and who

61 Senate Legal and Constitutional Affairs Legislation Committee, Inquiry into the Religious Discrimination Bill 2021 [Provisions]; Religious Discrimination (Consequential Amendments) Bill 2021 [Provisions] and Human Rights Legislation Amendment Bill 2021 [Provisions], *Committee Hansard*, 21 January 2022, p.44.

62 ACOSS, *Submission 62*.

63 Australian Medical Association, *Submission 96*.

64 Public Health Association of Australia, *Submission 123*.

require sensitive and specialist health services free from stigma and discrimination.⁶⁵

1.98 Human rights organisations such as the Human Rights Law Centre opposed the Bills, noting:

... the Government's Religious Discrimination Bill 2021 (the Bill) repeats the patterns of the first and second exposure drafts of the Bill and fails to strike the right balance between the freedom to manifest religion and the right of everyone to equal treatment and non-discrimination.

The removal of a provision from the second exposure draft that would have allowed doctors with a religious objection to certain health services to abandon their ethical duties to their patients is welcome, as well as the removal of the so-called 'Folau clause'. However, there remain a number of provisions that are unprecedented, unjustified and inconsistent with international human rights laws ... The effect is to give a greater licence to discriminate on religious grounds than already exists in law, to the detriment of people of minority faiths, women, LGBTIQ+ people, people with disability, First Nations people, people of colour and many others. For people who face multiple and intersecting forms of discrimination, such as ableism, racism and sexism, this Bill is an even greater threat. The Bill is inconsistent with Australia's international human rights obligations and should be opposed by the Committee. It is also inconsistent with the commitment made by former Attorney General Christian Porter to draft a bill that does not provide a licence to discriminate ...⁶⁶

1.99 Amnesty International Australia (AIA) shared those concerns, stating:

AIA has serious concerns that this Religious Discrimination Bill (the Bill) in its current form will condone behaviour, statements and environments that create unsafe or potentially harmful environments for some people and communities who are attempting to access essential services such as health, mental health, education, accommodation, crisis support services, aged care and nemployment. This Bill will particularly impact on LGBTQIA+ people, people with a disability and/or lived experience of mental illness, Aboriginal and Torres Strait Islander people, rural and remote communities, single parents, divorcees, people of minority faiths and beliefs, people with limited support or resources, women, children and young people.⁶⁷

1.100 Education sector unions also expressed profound concerns, with the National Tertiary Education Union noting:

The NTEU opposes this Bill. It will increase, rather than decrease, discrimination. It is not in-line with existing anti-discrimination measures in

65 Australian Federation of Aids Organisations, *Submission 147*.

66 Human Rights Law Centre, *Submission 190*.

67 Amnesty International Australia, *Submission 157*.

other areas but raises rights of religious expression above all other rights. It creates additional powers for organisations to discriminate against employees (and students) in cases when it is not necessary for performance of a job. Instead of imposing this complex, confusing and inconsistent system over the top of state laws, a new federal protection against discrimination for workers and other individuals on the grounds of religion could be achieved by a simple amendment to an existing discrimination act.⁶⁸

1.101 The Council of the Ageing, advocating for older Australians, also noted its concerns, stating that:

... there are some elements of the religious discrimination legislative package that do not appear to meet this core test of equal rights amongst its peer attributes. Accordingly, we recommend the bill only be supported with amendments.⁶⁹

Fundamental flaws in the government's approach

1.102 As outlined by numerous witnesses, the approach adopted by the Government goes significantly beyond a standard anti-discrimination Act. That approach would have had widespread support across the community, been significantly less controversial and damaging to social cohesion, and would have involved a much more straightforward drafting approach, reducing the risks of constitutional questions and other flaws.

1.103 As the Australian Human Rights Commission noted in its submission:

Many provisions of the Bill are consistent with the objective of providing protection against discrimination on the ground of religious belief or activity that is equivalent to the protection against

discrimination on other grounds such as race, sex, disability and age in existing Commonwealth laws. The Bill prohibits direct and indirect discrimination on the ground of religious belief or activity in areas of

public life covered by those other Commonwealth discrimination laws.

The Bill also provides for general and specific exemptions, most of which are broadly consistent with other discrimination law. The Commission endorses these elements of the Bill. They represent a conventional means of incorporating certain protections from international human rights law into Australia's domestic law.

However, the Commission is concerned that, in other respects, the Bill would provide protection to religious belief or activity at the expense of other rights. The Commission considers that those provisions of the Bill

68 National Tertiary Education Union, *Submission 25*.

69 Council of the Ageing, *Submission 29*.

need to be amended or removed, because they limit other human rights in a way that is unnecessary and disproportionate, or are otherwise inconsistent with international human rights law.⁷⁰

1.104 Similarly, the Public Interest Advocacy Centre noted that:

There is a clear role for a Commonwealth Religious Discrimination Act to provide effective protection against discrimination on the grounds of religious belief in public life, consistent with the protection afforded other grounds such as sex, race, disability, age and sexual orientation. Such an Act would play an important role in supporting a tolerant, diverse and fair community and help prevent discrimination against religious minorities in Australia.

This Bill is not that Act.

Unfortunately, the Religious Discrimination Bill is a radical departure from existing antidiscrimination law principles and norms. If passed, it would undermine the rights of women, LGBTI people, people with disability and people of minority faiths to live their lives free from discrimination. It is excessively complicated and contains a range of novel provisions that seek to privilege religious views over other rights in ways that will corrode, rather than build, tolerance and harmony.⁷¹

Recommendation 4

1.105 That the current bills not proceed.

Recommendation 5

1.106 That the Australian Government develop a Charter of Rights, to protect religious belief amongst other protected attributes.

Recommendation 6

1.107 That any new Religious Discrimination bill adopt a similar approach to other anti-discrimination legislation, operating as a shield not a sword

Senator Janet Rice
Senator for Victoria

70 Australian Human Rights Commission, *Submission 97*.

71 Public Interest Advocacy Centre, *Submission 40*.