Anglican Church of Australia

Public Affairs Commission

Submission of the Public Affairs Commission of the Anglican Church of Australia on the second exposure drafts of the Religious Discrimination Bill 2019 and associated bills

29 January 2020

1. This submission is made by the Public Affairs Commission (PAC) of the Anglican Church of Australia (ACA). The PAC is a body set up, amongst other matters, to respond to aspects of public affairs as referred by the Primate, Standing Committee or General Synod of the ACA or initiated by the PAC. The views expressed in this submission are only the views of the PAC and should not be taken to reflect the opinion of the ACA, the Primate, the Standing Committee or any of the Dioceses.

2. The PAC made a submission on 1 October 2019 ("previous submission") in relation to the first exposure drafts of the following Bills and welcomes the opportunity to make further comments on the second exposure drafts of:
   - Religious Discrimination Bill 2019 ("RDB");
   - Religious Discrimination (Consequential Amendments) Bill 2019 ("RDCAB");
   - Human Rights Legislation Amendment (Freedom of Religion) Bill 2019 ("HRB").

3. You have advised that our previous submission has been retained and there is no need to enclose this again. These submissions therefore will not repeat our previous submission, except in summary only in relation to the points below. We have no additional comments in relation to the RDCAB or the HRB so will only address the RDB.

Summary of these submissions

4. The PAC expressed its concerns about the first draft RDB in our previous submission. While there have been some slight improvements in some aspects, the main concerns that we expressed before remain unresolved. We believe the second RDB draft 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 cannot support the draft RDB and will be alerting other Anglicans of the problems with this draft legislation. The details of our concerns are set out below.

Support for legislation against discrimination, including religious discrimination

ABN: 90 767 330 931 ● Suite 4, Level 5, 189 Kent Street, Sydney NSW 2000
Tel: +61 2 8267 2700 ● Fax: +61 2 8267 2727 ● www.anglican.org.au
Email: publicaffairs@anglican.org.au

5. Our previous submission supported the principle of protecting people against religious discrimination, particularly discrimination against minority religious groups. We noted that this was because of the need to protect *all* human rights of vulnerable people. We therefore supported the statement in ss3(2) of the first RDB draft that stressed the universality and indivisibility of human rights and we support the addition to say that these rights have equal status in international law (in ss3(2) of the second RDB draft and in the equivalent provisions in other discrimination legislation as set out in the HRB).

6. This principle of indivisibility and equal status of human rights means that it is essential that religious freedom should *not* be protected at the expense of other equally important human rights such as the right not to be discriminated against on the grounds of sexuality, gender, race, disability and the like. Efforts must be made to find ways of protecting all these rights as far as possible and to avoid providing a licence to discriminate against others.

Employer and Qualifying body conduct rules – deemed unreasonableness regarding statements of belief - ss8(3) – (5)

Preference for removal of ss8(3)-(5)

7. Our previous submission set out our concerns about the strange form of ss8(3) of the first RDB draft which deemed certain restrictions by employers on statements of beliefs to be unreasonable and thus to be impermissible indirect discrimination. Our concern was that statements of belief could be racist, sexist, homophobic, condemning of people of different abilities or otherwise offensive and harmful to a range of people, particularly vulnerable groups, and contrary to the aims of other anti-discrimination laws.

   We argued that the sub-section 8(3):

   - was arbitrary, in applying only to large employers with $50 million revenue and especially in only recognising one form of hardship for the employer i.e. unjustifiable financial hardship;
   - was too wide in deeming restrictions on statements of belief to be unreasonable without enabling an assessment of all the facts, the religious necessity to make the statements, the contexts and audiences of the statements being made and the nature and tone of the statements; and
   - an unnecessary addition to the usual formulation to prevent indirect discrimination in ss8(1), (2) and (8) which require proof that discriminatory conditions are reasonable, but enable all the circumstances and all harms to be balanced to assess reasonableness.

8. Further, there is nothing in the definition of “statement of belief” which provides that such statements are *required* by the religion to be made or to be made in that particular context or manner, so they may be totally optional in the circumstances.

   This is relevant to balancing the harm suffered by discrimination. Restricting totally optional but very hurtful statements of belief may not cause any real harm to the

religious freedom of the believer but may cause severe harm to vulnerable people who are the target of the statements, as well as to employers and qualifying bodies who are likely to be the subject of rejection by decent-minded customers and employees. By deeming restrictions on statements of belief to be unreasonable the RDB unduly upsets the balance between protecting the various human rights equally.

9. We urged in our previous submission that ss8(3) and (4) be removed or at least their combined effect be narrowed substantially in scope. One key concern was that this section could restrict employers from promoting a culture that is harmonious and respectful to diverse workforces and clients.

Comments and suggestions on ss8(3) to (5) if they remain

10. We note that ss8(3) has been improved slightly in expanding the situations when the employer conduct rules can restrict statements of belief, that is, "*in the course of an employee's employment*" rather than just when they were "performing work on behalf of the employer". Nevertheless, this still does not allow employers to restrict hurtful highly publicised statements by prominent employees or senior managers made *outside of work contexts*. Public statements that are circulated widely can just as severely damage the reputation of the business or "brand" with customers and cause fear and insecurity for other employees who are made painfully aware of what their managers/service providers think of them.

11. A new ss8(4) has been added in the second RDB draft to expand the deemed unreasonableness to "*qualifying bodies*" such as bodies that can control qualifications or licences for carrying out professions, trades or occupations. The concerns expressed in our previous submission apply equally to this provision.

    We note, however, that ss8(4) is somewhat narrower than the employer conduct rule situation in ss8(3) in that restrictions by qualifying bodies on statements of belief are permitted where compliance with the rule by the person is "*an essential requirement of the profession, trade or occupation.*" By contrast under ss8(3), large employers need to establish unjustifiable financial hardship in order to be allowed to restrict statements of belief. The harm for large employers and the public may be mitigated somewhat by permitting something similar to ss8(4), that is, by allowing restrictions by relevant employers on statements of belief if compliance with such rules is "an inherent or essential requirement of the employment". Unfortunately, ss32(6) of the second RDB draft continues to provide the very opposite, that is, such restrictions on statements of belief cannot be inherent requirements of employment.

12. The amendment to define "vilify" as only "inciting hatred and violence" means that it is even more important to provide for the ability of employers to also restrict statements of belief that "denigrate", "humiliate" or "incite prejudice" in ss8(5). The ss8(5) bar of allowing restrictions of statements only if such statements of belief are malicious, harassing, threatening, seriously intimidating or inciting hatred or violence is too high a bar for employers or qualifying bodies to have to overcome to facilitate harmony and respect.

13. We therefore still urge that ss8(3) to (5) of the RDB second draft be removed or at least substantially restricted in the manner set out in our previous submission, namely:

   - That the last clause of ss8(3) should read "*is not reasonable unless compliance with the rule by employees is an inherent requirement of the employment or necessary to avoid unjustifiable financial hardship to the employer, damage to the reputation of the employer or to ensure compliance with anti-discrimination laws".* The changes are to expand situations of potential reasonableness beyond merely unjustifiable financial hardship. Anti-discrimination laws could be defined, for example as in the proposed s42.
   - To remove s32(6) and the note under ss8(3) which provide that such an employer conduct rule that is unreasonable under this subsection is not an inherent requirement of employment.
   - To expand the exception in ss8(5)(b) so that s8(3) will not apply to a statement of belief *"that would, or is likely to, harass, denigrate, humiliate, vilify, or incite prejudice against another person or group of persons".*

14. The definition of a "statement of belief" could be also amended in (a)(iii) to one in which is *required* to be made by the doctrines, tenets, beliefs or teachings of that religion. This will be harder for the corresponding statement of non-belief but could be one that a person who does not hold a religious belief "reasonably considers to be *required* by reason of not holding a religious belief". We note that rules restricting statements that are not required may still be unreasonable discrimination in all the circumstances but are not automatically deemed to be so.

Health practitioner conduct rules – ss8(6) – (7) – conscientious objection provisions

Preference for removal of ss8(6) – (7)

15. In our previous submission we argued that the equivalent health practitioner sections were not required and too widely drafted. We acknowledged the importance of allowing conscientious objections to carry out certain types of health services, eg abortions or assisted dying, where feasible, but opposed any conscientious objection based on the *identify or characteristics* of the person seeking the services. We also argued that such feasibility depended on all the circumstances and that the health of the person seeking the service should be a vital or even paramount consideration along with other important considerations as the availability of the service from other practitioners in the same health service or in the geographical area.

    We still submit that these considerations could all be better taken into account under the general reasonableness provisions of ss8(1)-(2) and that the specific health practitioner conscientious objection provisions in what is now ss8(6)-(7) and s32(7) of the second RDB draft should be removed.

Alternative drafting if ss8(6) – (7) remain

16. If these provisions are to remain, we are pleased that the definition of conscientious objection and ss8(6) now only relate to the *kind of health service* to be provided and does not allow selective discrimination against people who may be seeking the service. We are also pleased that the types of services that qualify as health services for the purposes of this provision have been reduced.

17. We do still retain our concerns about the convoluted way in which State and Territory conscientious objection provisions are recognised in ss8(6) when the wording akin to that in Note 3 could be used, by just providing in a separate section that nothing in the Act will affect the operation any State or Territory law which allows for a conscientious objection to the provision of a health service on the basis of religious belief or activity.

18. Our key concern remains to ensure that the ss8(7) exceptions are wide enough to uphold the health of and accessibility for the person seeking the service, especially in remote areas where options for alternative health practitioners are limited. We note that the Explanatory Notes provides examples of injury to health or the inability to obtain contraception in remote areas may be situations of unjustifiable adverse impact that would allow the imposition of a health conduct rule requiring that certain services be provided even if there is a conscientious objection.

    To avoid arguments as to what is “unjustifiable” adverse impact, we still recommend that if ss8(6) and (7) are to remain, that terms like “unjustifiable” be removed. We also still prefer the further provisions recommended in our previous submission to make it clear that health of all kinds and the ability of the person seeking the service to obtain that service are important considerations, namely:

    > “a health practitioner conduct rule is not reasonable unless compliance with the rule is necessary to avoid an ~~unjustifiable~~ adverse impact on:
    >
    > (a) the ability of the person imposing, or proposing to impose, the rule to provide the health service;
    > (b) the health (including physical, mental or emotional health) of any person who would otherwise be provided with the health service by the health practitioner;
    > (c) the ability of the person seeking the service to obtain the said health service; or
    > (d) the ability of the person imposing, or proposing to impose, the rule to comply with any anti-discrimination laws.”

19. As previously noted, if a health practitioner conduct rule is not automatically deemed unreasonable, it still has to be established as reasonable under the ordinary indirect discrimination tests under ss8(1) and (2).

Impact on other Anti-Discrimination Statutes – s42

s42 should be removed and operation of other anti-discrimination laws preserved

20. This is at the heart of our objections to the Bill. In line with the need to protect equal and indivisible human rights, our previous submission expressed great concern about the equivalent to s42 of the second RDB draft because it provides that statements of belief of the kind discussed above do not constitute discrimination under any discrimination law, including specifically the Tasmanian *Anti-Discrimination Act.* This provision gives an immunity to religious believers to make statements that may be totally racist, sexist or which may ridicule people with disabilities and the like.

21. We continue to urge that s42 be removed and replaced by an express provision to confirm that nothing in the Act shall override or affect the operation of any other anti-discrimination law.

Determining doctrines, tenets, beliefs and teachings – eg in definition of conscientious objection, statement of belief and s11 exceptions for religious bodies

Whose view of doctrines? Need more than just another person from the same religion

22. We note that the second RDB draft changes the test for determining whether something is in accordance with the doctrines of the religion. Instead of a more objective test of whether a belief "may reasonably be regarded as being" in accordance with the doctrines, tenets, belief or teachings of the religion, the test is now whether "*a person of the same religion as the first person/religious body could reasonably consider to be"* in accordance with the doctrines, tenets, beliefs or teachings of that religion.

23. While we recognise the difficulties of an outsider like a court determining doctrines of a religion, this is common in legislation and the exercise has been undertaken in courts and tribunals. We note that in religious freedom cases, the emphasis is on the individual's freedom to believe which is necessarily subjective. On the other hand, in the context of "deemed reasonableness" of statements of belief and conscientious objections and especially in the case of s11 exceptions for religious bodies, we believe the test requires more than just the views of *any* person of the same religion, no matter how uninformed or peculiar those views may be.

24. We therefore recommend that either the original objective formulation is retained or that the test should at least be whether the conduct or belief is such that a substantial number of persons in senior positions or leadership roles or with authority to determine such matters in that same religion could reasonably consider it to be in accordance with the doctrines, tenets, beliefs or teachings of the religion. This would not require unanimity or even a majority view but just to ensure that it is not just an idiosyncratic interpretation of doctrine by a small minority within the religion.

Indigenous spirituality

25. We are pleased that the Explanatory Note confirms that religious belief (undefined) is intended to capture Indigenous spirituality as Aboriginal and Torres Strait

Islanders are regularly the subject of religious discrimination, including in relation to their ability to practice their ceremonies and protect their sacred places.

Avoiding injury to religious susceptibilities – recommend removal of this test

26. We note that the second RDB draft adds another limb in ss11(3) and (4) and in Part 3 Division 4 to provide that it is not discrimination under the Act to engage in good faith in conduct "*to avoid injury to the religious susceptibilities of adherents of the religion*". While this is a common term in religious body exemptions in anti-discrimination legislation, it seems inappropriate that differential conduct which is not required by doctrine should be exempt from discrimination laws because of some particular (and potentially idiosyncratic) religious susceptibilities of adherents or a minority of them. We therefore believe that this limb should be removed wherever it appears in the RDB draft.

    If it is to remain, contrary to our submissions, then it should be restricted to conduct *necessary* to avoid injury to the religious susceptibilities of adherents of the religion.

Religious body exceptions – s11

General approach to these exceptions

27. As indicated in our previous submission, the religious body exceptions should be substantially redrafted. We recommend re-framing the exceptions in the following ways explained below:
    - confirming that this legislation does not permit religious bodies to carry out what would be unlawful under other anti-discrimination legislation (Commonwealth, State or Territory) – see paragraphs 29 - 30 below;
    - restricting the definition of religious bodies to those *established for religious purposes,* not just bodies acting *in accordance with* doctrines of their religion – see paragraphs 35 - 36 below;
    - expanding the definition of religious bodies (ie only those established for religious purposes) to include registered charities, hospitals and aged care services, accommodation facilities even if they engage in commercial activities (but still exclude commercial bodies that are not registered charities or educational institutions). This also would conveniently move exceptions relating to those bodies from ss32 and 33 to be dealt with together as religious bodies in s11– see paragraphs 35 - 38 below;
    - providing that preferencing persons of the same religion is usually not unlawful religious discrimination – see paragraphs 31 - 34, 39 below;
    - providing that using religious criteria in "internal matters" of the kind in s37(1)(a) to (c) of the *Sex Discrimination Act 1984* (Cth), namely the appointment, admission, training of ministers, members or anyone performing duties or functions in connection with religious observances or practices, will not amount to unlawful religious discrimination – see paragraph 40 below;

- providing that any other act of a religious body on the grounds of religious belief is not religious discrimination if it is *required* in order to conform to the doctrines, tenets, beliefs and teachings of the religion [see paragraphs 41 below].
- "Carving out" exceptions that could still amount to unlawful religious discrimination. These areas should be the subject of further detailed consultation with a range of community groups. We reiterate our previous submission that it would be best if this could await the Australian Law Reform Commission report on religious body exemptions. Some of the exceptions that we believe should be carved out include:
    - removing the ability of religious educational institutions to expel or punish or inflict adverse treatment of students on the grounds of religious belief - see paragraph 42 below;
    - removing the ability of aged care providers, hospitals or welfare agencies to treat residents/patients/ recipients or services or potential residents/patients/recipients of services adversely on the grounds of religious belief - see paragraph 43 below;
    - removing the ability of religious camps and conference sites to refuse accommodation on religious grounds unless this is in accordance with publicly available policies and these policies are applied consistently and not arbitrarily – see paragraph 44 below;
    - removing the ability of religious bodies to dismiss staff on the grounds of religious belief unless their beliefs are an inherent requirement of their employment and that is stated in their terms of employment – see paragraph 45 below.

  These limits on exceptions are subject to the general ability to provide preferences as discussed below, except, in the case of *provision of services* by hospitals and welfare agencies, which are bodies set up to cater for a wide range of people, there should not be an ability to discriminate on grounds of religion.

28. At the outset we stress that most Anglican bodies like schools, welfare agencies, aged care facilities and the like have no intention of discriminating against people on the grounds of religion in provision of services and indeed the doctrines of our faith require consideration and care for the most vulnerable within society, regardless of their religion. However, we recognise that the proposed legislation has to cater for a vast range of religions and religious views.

    More detailed comments on these are set out below.

Not permitting what would be discrimination under other anti-discrimination law.

29. Our previous submissions expressed a concern that other anti-discrimination legislation should not be able to be subverted by arguments that the discrimination was on the grounds of a person's religion, not their sex or race, age or ability.

30. We are pleased for the clarification in the Notes to s11 that the section does not permit conduct otherwise unlawful under another Commonwealth law, including the *Sex Discrimination Act*. We assume that given the fact that s11 only deals with

characterisation of conduct by religious bodies under this Act, that conduct unlawful under State or Territory legislation is also not being affected. To avoid doubts about whether the RDB will override State or Territory legislation and particularly in the light of s42, then it should be made explicit along the following lines:

> "s11 does not permit conduct by religious bodies that is otherwise unlawful under other Commonwealth law or under any anti-discrimination law (within the meaning of the *Fair Work Act 2009*)."

This should be expressed in a sub-section to s11 rather than in a note.

We still remain concerned about whether the wording of s11 is sufficient to prevent other anti-discrimination laws from being subverted. For instance, will it still be a breach of the *Sex Discrimination Act* if the body tries to argue that the ground for the differential conduct was not, for example, a person's sexuality but their religious beliefs about sexuality? We recommend that examples could be given in a note or in an explanatory memorandum to demonstrate that the above situation could still be found to be unlawful under the *Sex Discrimination Act* if it is established that a person's sexuality was at least one of the grounds for differential conduct.

Support for enabling preferences to people of the same religion

31. We are pleased that the giving of *preferences* to people of one's own religion has been included in ss11(2) and (4) and s32 and s33, even where there may not be a specific doctrine requiring preferences or employment of co-religionists. The key reason why we sought in our previous submission to retain some religious body exceptions was to enable preferences to be given to people sharing the same religion so as to maintain the ethos and mission of the religion or to facilitate ministry to people of the same faith, rather than out of any desire to discriminate *against* others.

32. We do not believe distinctions should be drawn between people at a senior management level in a religious body and those at more junior levels. Some religious bodes will see the whole enterprise and all work within it as mission and ministry engaged in by the whole staff who are all representatives of that religion and key parts of that mission.

33. Preferences are required not only in the employment of staff or appointment of board members but may also be relevant to the *provision of services or accommodation*. For example, schools may need to give preferences to educate people of their own religion who cannot obtain the same type religious instruction or the same dietary services or dress requirements or days of rest at other schools. People not of that religion are more likely to have other options. Scholarships may also need to be provided to enable some children of that religion to attend the school.

    Similarly, in the aged care situation, preferences should be able to be given to residents from their religion who may need to be able to worship in their dedicated

worship spaces and have easy access to ministry, dietary requirements etc. which would be available at an aged-care facility catering for people of that religion.

Limits on this could be placed to prevent people from being removed from those institutions on grounds of religious belief if beliefs change or if their places are later required by others.

(We do not, however, believe it is appropriate for any preferences in provisions of services in larger organisations like hospitals and welfare agencies which are set up and funded to provide services to a wide range of people in need. See paragraph 43 below.)

34. The preference provisions are only relevant where places or services are limited and there is demand for them from people of the same religion. This would usually not be an issue in large religious organisations. The preference provisions would not allow discrimination *against* people of particular religions or lack of religion if there are no people of the same religion needing to take up places or services.

Definition of religious body - should be all those established for religious purposes

35. We note that the scheme is that some bodies are defined as religious bodies and not subject to the prohibitions in the RDB. These include educational institutions, public benevolent institutions and other bodies which do primarily engage in commercial activities, all of which must conduct themselves in accordance with doctrines, tenets, beliefs and teachings of their religion. There are, on the other hand, some bodies that religions will regard as religious bodies but they have been excluded from the religious body definition and thus from the general religious body exceptions, such as hospitals and aged care services, religious conference or camp sites, registered religious charities which primarily carry out commercial activities (possibly Op shops, conference centres and the like.)

36. This appears to be a fairly arbitrary distinction based on particular activities rather than the purpose of the establishment of the body. The concept of a religious body should not be artificially defined by their activities but by their purpose. For reasons outlined in our previous submission, we believe that the definition should be narrowed to refer not just to whether they happen to conduct their activities in accordance with doctrines but to apply only where the body is *established for religious purposes,* as well as conducting activities in accordance with the doctrines, tenets beliefs or teachings of their religion. This is consistent with the wording in other legislation like the *Sex Discrimination Act* 1984 (Cth) s37 and the *Age Discrimination Act 2004* (Cth) s35.

Once the definition of all religious bodies is narrowed, there would seem to be no good reason to exclude non-public benevolent religious charities, including those who may primarily carry out commercial activities, from the definition of a religious body. Any concerns about the width of their activities and ability to discriminate can be dealt with by way of specific limitations.

This could be achieved by replacing "public benevolent institution" with "registered charity" in s11(5)(b) and removing the specific exclusion of hospitals, aged care facilities and those primarily providing accommodation from the end of s11(5).

This would still exclude non-charitable private individuals or corporations that may happen to want to run their businesses in accordance with the doctrines of a religion.

In referring to bodies established for religious purposes, we emphasise that this should not be treated as equivalent to Basic Religious Charities under the Charities legislation which is a very narrow concept.

37. We believe it would be easier to deal with all religious bodies together in s11 rather than have some of them, such as hospitals and aged care and accommodation facilities dealt with in sections 32 and 33 in Part 3 Division 4. The particular crafting of what should be protected and what should not could occur by carving out some provisions from the (narrowed) general exemptions in s11. This is discussed further below.

38. It is particularly important to bring hospitals, aged care facilities and accommodation facilities into the religious body exception because in ss32 and 33 where they appear, the specific exemptions apply to *any persons* who run those facilities in accordance with doctrines of a religion. If brought into the s11 religious body definition that we are proposing, then the exceptions will only apply if they are run by bodies that are established for religious purposes and conducted in accordance with doctrines of the religion, not just by individuals who may happen to be religious.

Carving out matters or specific limitations in the religious body exception

39. As set out above, we believe that religious bodies established for religious purposes should usually be able to give preferences to people of their own religion.

40. It is probably non-controversial that religious bodies should be able to base "internal matters" like membership, training for ministry and matters relating to religious observances or practices on religious criteria. For example, this is the scheme of s37(1)(a) to (c) of the *Sex Discrimination Act 1984* (Cth).

41. The RDB draft provides a wider "catch-all" provision in s11(1). We would recommend that be limited to conduct *required* to conform with doctrines of the religion as follows, not just any conduct which happens to be in accordance with doctrines, such as:

> "A religious body does not ***discriminate*** against a person under this Act by engaging, in good faith, in conduct that **is required** in order to conform to the doctrines, tenets, beliefs or teachings of that religion."

The effect of this would deal with many of the perceived problems that of religious bodies discriminating against people of other or no religions in employment or provision of services because religious doctrines do not often *require* other people to be refused employment or services or be expelled etc.

Any such problems can be further dealt with by specific exclusions from this "catch-all" provision such as those examples outlined below.

42. One area which should be carved out from the exception is in relation to *religious educational institutions.* Educational institutions should be defined to cover only registered or accredited schools and tertiary institutions, and not apply to education or teaching in other settings like religious instruction or worship in churches, temples, mosques, Aboriginal or Torres Strait Islander rituals and ceremonies, or private homes etc. as these are more akin to and dealt with under the provisions relating to "internal matters" like training for ministry and religious observances or practices referred to in paragraph 39 above.

    In relation to standard educational institutions, due to the severity of harm to students and the disruption that expulsion may cause, we would recommend that religious educational institutions *not* be permitted to expel, punish or subject students to differential adverse treatment on the grounds of their religion. It is common for students to question or doubt their faith and this should not result in expulsion or punishment or detriment.

    There could be a clarifying statement that teaching the religion in good faith in these educational institutions as required by doctrine is not discrimination if set out in publicly available policies and if there is no detriment or adverse treatment imposed on students on religious grounds.

    For more details on these concerns, please see our submissions on the *Sex Discrimination Act 1984* (Cth) amendment proposals attached to our previous submission, many of which concerns apply equally to religious discrimination context.

43. In relation to aged care facilities, there could also be a limit so that differential treatment on the grounds of religion, other than the preferences referred to earlier, is not permitted under the Act. This would then prevent the subversion of the exception for Commonwealth aged-care services in s37 of the *Sex Discrimination Act 1984* (Cth) through arguing that it is on the basis of religious belief not sexuality.

    As indicated in paragraph 33 above, for hospitals and welfare agencies which are set up and funded by governments to provide services to a wide range of people in need of medical treatment or welfare and other benefits, there should be no discrimination against people in need of services or donations even if they belong to a different religion. These need to be "carved out" as well.

44. Similar comments apply in relation to religious camps and conference facilities run by religious bodies. There could be a limit so that, subject to preferences above such as in employment or in the availability of the conference centre for the needs of people from the same religion, differential treatment on the grounds of religion would not be excepted from the rest of the Act unless set out in accordance with a publicly available policy that is applied consistently.

45. Further, given the serious ramifications of dismissal on staff of religious bodies, it should still be unlawful to dismiss staff who may change their religious views or affiliations or when management decides to make such beliefs relevant when they were not previously. However, in some situations, religious beliefs of the employee may be an inherent part of employment, for instance, chaplains or school principals or religious education teachers etc. It should still be lawful for religious bodies to dismiss staff where their positions inherently require particular religious affiliations and beliefs but this should only be possible where their terms of employment or engagement make that clear.

46. These particular religious body exceptions highlight the need to await the finalisation of the Australian Law Reform Commission report on religious body exceptions which will no doubt inform how best to manage these for this Act. If the government intends to proceed with this religious discrimination legislation, a review of s11 should then be required when the Australian Law Reform Commission reports.

Associates – s9

47. We support the inclusion of a provision like s9 to extend the protection against religious discrimination to relatives of individuals of particular religions. It would seem inconsistent to extend this to corporations associated with individuals of particular religions given that corporations themselves are not able to be discriminated against under the RDB.

As a result of the matters outlined above, we would urge that the introduction of the RDB be delayed and substantially redrafted. We would be happy to be consulted further.

Yours faithfully,

Dr Carolyn Tan,
Chairperson of the Public Affairs Commission